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**FINAL NOTICE**

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To: Barclays Bank Plc  
Of: 1 Churchill Place  
London  
E14 5HP  
FSA Reference Number: 122702  
Date: 27 June 2012

**ACTION**

1. For the reasons given in this notice, the FSA hereby imposes on Barclays Bank Plc (“Barclays”) a financial penalty of £59.5 million in accordance with section 206 of the Financial Services and Markets Act 2000 (the “Act”).
2. Barclays agreed to settle at an early stage of the FSA’s investigation. Barclays therefore qualified for a 30% (stage 1) discount under the FSA’s executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £85 million on Barclays.

**SUMMARY OF REASONS**

3. The London Interbank Offered Rate (“LIBOR”) and the Euro Interbank Offered Rate (“EURIBOR”) are benchmark reference rates fundamental to the operation of both UK and international financial markets, including markets in interest rate derivatives contracts.
4. LIBOR and EURIBOR are by far the most prevalent benchmark reference rates used in euro, US dollar and sterling over the counter (“OTC”) interest rate derivatives

contracts and exchange traded interest rate contracts. The notional amount outstanding of OTC interest rate derivatives contracts in the first half of 2011 has been estimated at 554 trillion US dollars.<sup>1</sup> The total value of volume of short term interest rate contracts traded on LIFFE in London in 2011 was 477 trillion euro<sup>2</sup> including over 241 trillion euro relating to the three month EURIBOR futures contract (the fourth largest interest rate futures contract by volume in the world).<sup>3</sup>

5. LIBOR and EURIBOR are used to determine payments made under both OTC interest rate derivatives contracts and exchange traded interest rate contracts by a wide range of counterparties including small businesses, large financial institutions and public authorities. Benchmark reference rates such as LIBOR and EURIBOR also affect payments made under a wide range of other contracts including loans and mortgages.
6. The integrity of benchmark reference rates such as LIBOR and EURIBOR is therefore of fundamental importance to both UK and international financial markets.
7. Barclays breached Principles 2, 3 and 5 of the FSA's Principles for Businesses through misconduct relating to its submission of rates which formed part of the LIBOR and EURIBOR setting processes. There was a risk that Barclays' misconduct would threaten the integrity of those benchmark reference rates.

#### **Inappropriate submissions following requests by derivatives traders**

8. Barclays acted inappropriately and breached Principle 5 on numerous occasions between January 2005 and July 2008 by making US dollar LIBOR and EURIBOR submissions which took into account requests made by its interest rate derivatives traders ("Derivatives Traders"). At times these included requests made on behalf of derivatives traders at other banks. The Derivatives Traders were motivated by profit and sought to benefit Barclays' trading positions.
9. The definitions of LIBOR and EURIBOR require submissions from contributing banks based on borrowing or lending in the interbank market. The definitions do not allow for consideration of derivatives traders' positions. It was inappropriate for Barclays to make US dollar LIBOR and EURIBOR submissions which took its Derivatives Traders' positions (or the positions of traders at other banks) into account. Barclays did not therefore observe proper standards of market conduct when making US dollar LIBOR and EURIBOR submissions.
10. Barclays also breached Principle 5 on numerous occasions between February 2006 and October 2007 by seeking to influence the EURIBOR (and to a much lesser

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<sup>1</sup> 'OTC derivatives market activity in the first half of 2011', Bank for International Settlements (November 2011). [www.bis.org/publ/otc\\_hy1111.pdf](http://www.bis.org/publ/otc_hy1111.pdf)

<sup>2</sup> NYSE Liffe Statistics, 2006 to 30 December 2011, Product Type: Derivatives, Region: Amsterdam, Brussels, Lisbon, London, Paris. [https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse\\_liffe\\_statistics\\_dec\\_2011.xls](https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_liffe_statistics_dec_2011.xls)

<sup>3</sup> Futures Industry Association; Annual Volume Survey 2011 by Will Acworth.

extent the US dollar LIBOR) submissions of other banks contributing to the rate setting process.

11. Where Barclays made submissions which took into account the requests of its own Derivatives Traders, or sought to influence the submissions of other banks, there was a risk that the published LIBOR and EURIBOR rates would be manipulated. Barclays could have benefitted from this misconduct to the detriment of other market participants. Where Barclays acted in concert with other banks, the risk of manipulation increased materially.

### **Inappropriate submissions to avoid negative media comment**

12. Barclays acted inappropriately and breached Principle 5 on numerous occasions between September 2007 and May 2009 by making LIBOR submissions which took into account concerns over the negative media perception of Barclays' LIBOR submissions.
13. Liquidity issues were a particular focus for Barclays and other banks during the financial crisis and banks' LIBOR submissions were seen by some commentators as a measure of their ability to raise funds. Barclays was identified in the media as having higher LIBOR submissions than other contributing banks at the outset of the financial crisis. Barclays believed that other banks were making LIBOR submissions that were too low and did not reflect market conditions. The media questioned whether Barclays' submissions indicated that it had a liquidity problem. Senior management at high levels within Barclays expressed concerns over this negative publicity.
14. Senior management's concerns in turn resulted in instructions being given by less senior managers at Barclays to reduce LIBOR submissions in order to avoid negative media comment. The origin of these instructions is unclear. Barclays' LIBOR submissions continued to be high relative to other contributing banks' submissions during the financial crisis.

### **Systems and controls failings**

15. Barclays breached Principle 3 from January 2005 until June 2010 (the "Relevant Period") by failing to have adequate risk management systems or effective controls in place in relation to its LIBOR and EURIBOR submissions processes. Barclays had no specific systems and controls in place relating to its LIBOR and EURIBOR submissions processes until December 2009 (when Barclays started to improve its systems and controls).
16. The extent of Barclays' misconduct was exacerbated by these inadequate systems and controls. Barclays failed, at a number of appropriate points during the Relevant Period, to review whether its systems and controls were adequate.

### **Compliance failings**

17. Barclays failed to conduct its business with due skill, care and diligence when considering issues raised internally in relation to its LIBOR submissions. Barclays therefore breached Principle 2. LIBOR issues were escalated to Barclays'

Investment Banking compliance function (“Compliance”) on three occasions during 2007 and 2008. In each case Compliance failed to assess and address the issues effectively.

18. Compliance’s failures meant that Barclays’ breaches of Principles 5 and 3 were allowed to continue. Compliance’s failures also led to unclear and insufficient communication about issues to the FSA.

### **Penalty**

19. The integrity of benchmark reference rates such as LIBOR and EURIBOR is of fundamental importance to both UK and international financial markets. Barclays’ misconduct could have caused serious harm to other market participants. Barclays’ misconduct also created the risk that the integrity of LIBOR and EURIBOR would be called into question and that confidence in or the stability of the UK financial system would be threatened.
20. The FSA therefore considers it is appropriate to impose a very significant financial penalty of £59.5 million on Barclays in relation to its misconduct during the Relevant Period.
21. In determining the appropriate level of penalty, the FSA has had regard to mitigating factors. In particular, Barclays has provided extremely good co-operation during the course of the FSA’s investigation. Barclays’ co-operation has enabled the FSA to conduct its investigation efficiently and expeditiously.

### **FACTS AND MATTERS**

22. This Notice sets out facts and matters relevant to the following:
  - A. background (see paragraphs 23 to 51);
  - B. inappropriate US dollar LIBOR and EURIBOR submissions made following requests from Derivatives Traders (see paragraphs 52 to 101);
  - C. inappropriate LIBOR submissions during the financial crisis (see paragraphs 102 to 145);
  - D. Barclays’ systems and controls (see paragraphs 146 to 161); and
  - E. the involvement of Compliance (see paragraphs 162 to 184).

#### **A. Background**

23. This section (paragraphs 23 to 51) provides relevant background information about:
  - i. the operation of international money markets and the relevance of LIBOR and EURIBOR to those markets;
  - ii. the definitions of LIBOR and EURIBOR;

- iii. the methods by which LIBOR and EURIBOR are set; and
- iv. the relevance of LIBOR and EURIBOR to interest rate derivatives contracts.

#### *The money markets*

- 24. Barclays may borrow money from, or lend money to, other financial institutions each day, including in Asia, Europe and the US. Barclays may borrow or lend money for specific periods of time (referred to as “maturities”) at particular rates of interest (“transacted rates”).
- 25. Where Barclays borrows or lends money for short periods of time (for example in maturities of one month, three months, six months or one year), this is described as borrowing or lending in the money markets. Barclays uses the money markets for liquidity management purposes. The individuals at Barclays with responsibility for liquidity management work on Barclays’ “Money Markets Desk”.
- 26. The Money Markets Desk obtains short term funding at rates offered to Barclays by other financial institutions, including through intermediaries (“Brokers”). The rates offered, amounts borrowed, currencies and maturities vary from transaction to transaction. The number and type of transactions also vary each day.
- 27. Where Barclays’ Money Markets Desk enters into transactions with other banks (as opposed to non-bank financial institutions such as money market funds) it is operating in the “interbank market”.
- 28. The transacted rate for a transaction in the money markets will often be defined by reference to a benchmark rate set by an industry body which can be referred to by any market participant. For example, the transacted rate may be expressed as a certain number of basis points higher than a specified benchmark reference rate.
- 29. Both LIBOR and EURIBOR are benchmark rates that are widely used in the international money markets. They are both published in a number of maturities each day. For example, if a financial institution borrowed a certain amount of US dollars for three months, it might agree to pay interest at a variable rate equal to the three month US dollar LIBOR rate plus twenty basis points.

#### *Definitions of LIBOR and EURIBOR*

- 30. LIBOR is published on behalf of the British Bankers’ Association<sup>4</sup> (“BBA”) and EURIBOR is published on behalf of the European Banking Federation<sup>5</sup> (“EBF”). LIBOR (in each relevant currency) and EURIBOR are set by reference to the assessment of the interbank market made by a number of banks. Those banks are selected by the BBA and EBF and each bank contributes rate submissions each day. These submissions are not averages of the relevant banks’ transacted rates on a given

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<sup>4</sup> bbaLibor is the legal entity sponsoring LIBOR. The Foreign Exchange and Money Markets Committee (“FX and MM Committee”) is responsible for the functioning and development of bbaLibor.

<sup>5</sup> Euribor-EBF is the legal entity sponsoring EURIBOR.

day. Rather, both LIBOR and EURIBOR require contributing banks to exercise their subjective judgement in evaluating the rates at which money may be available in the interbank market in determining their submissions.

31. Both LIBOR and EURIBOR have definitions which set out the nature of the judgement required from the contributing banks in determining their submissions:
  - i. since 1998, the LIBOR definition published by the BBA has been as follows: *“The rate at which an individual contributor panel bank could borrow funds, were it to do so by asking for and then accepting interbank offers in reasonable market size just prior to 11:00 London time”*;<sup>6</sup> and
  - ii. EURIBOR is defined by the EBF as *“The rate at which euro interbank term deposits are being offered within the EMU<sup>7</sup> zone by one prime bank to another at 11:00 am Brussels time.”*<sup>8</sup>
32. The definitions are therefore different, LIBOR focussing on the contributor bank itself and EURIBOR making reference to a hypothetical prime bank. However each definition requires submissions related to funding from the contributing banks. The definitions do not allow for consideration of factors unrelated to borrowing or lending in the interbank market.
33. The LIBOR and EURIBOR definitions are published and available to all participants in both UK and international financial markets.

#### *Method for setting LIBOR and EURIBOR*

34. Barclays is a contributor to various benchmark rates including LIBOR and EURIBOR. LIBOR and EURIBOR are calculated as averages from submissions made by a number of banks selected by the BBA or EBF. There are different panels of banks that contribute submissions for each currency in which LIBOR is published, and for EURIBOR. Barclays determines and makes submissions for LIBOR in ten currencies (in 15 maturities from overnight to one year in each currency) and for EURIBOR (also in 15 maturities) on a daily basis.
35. Barclays delegates responsibility for determining and making its LIBOR and EURIBOR submissions to a number of individuals (“Submitters”) on the Money Markets Desk within Barclays. These individuals are responsible for managing Barclays’ liquidity position and are therefore best placed within Barclays to assess the rates at which cash may be available to Barclays in the money markets. Barclays’ Submitters weigh up a number of factors relating to the interbank market each day in order to determine Barclays’ LIBOR and EURIBOR submissions. The Submitters input Barclays’ submissions into an electronic spreadsheet once they have made their determination.

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<sup>6</sup> <http://www.bbalibor.com/bbalibor-explained/definitions>

<sup>7</sup> European Monetary Union.

<sup>8</sup> <http://www.euribor-ebf.eu/euribor-org/about-euribor.html>

36. The LIBOR and EURIBOR submissions determined by Barclays are then transmitted to Thomson Reuters. Thomson Reuters collates the submissions data from each bank contributing rate submissions, checks for gross errors and calculates the final average benchmark rates on behalf of the BBA (for LIBOR) and the EBF (for EURIBOR). The calculations exclude the highest and lowest submission groups and produce an average (the arithmetic mean) of the remaining rates:
- i. until February 2011 the US dollar LIBOR panel consisted of 16 banks and the rate calculation for each maturity excluded the highest four and lowest four submissions. An average of the remaining eight submissions was taken to produce the final benchmark rates; and
  - ii. throughout the Relevant Period the EURIBOR panel consisted of at least 40 banks and in each maturity the rate calculation excluded the highest 15% and lowest 15% of all the submissions collated. A rounded average of the remaining submissions was taken to produce the final benchmark rates.
37. The submissions of each bank on the LIBOR and EURIBOR panels are published each day, as are the final benchmark rates. Each bank's submissions are accessible to participants in both UK and international financial markets (through licensed sources such as Thomson Reuters and Bloomberg).

#### *Interest rate derivatives contracts*

38. Interest rate derivatives contracts are used by financial institutions to manage their interest rate risks. Financial institutions may also make significant profits and losses by entering into interest rate derivatives contracts.
39. Research published by the Bank of International Settlements<sup>9</sup> in relation to OTC derivatives market activity in the first half of 2011 states that the notional amount outstanding of OTC interest rate derivatives contracts (which includes forward rate agreements, swaps and options) was approximately 554 trillion US dollars. This included approximately 220 trillion US dollars of contracts referenced to euro rates, 171 trillion US dollars of contracts referenced to US dollar rates and 50 trillion US dollars of contracts referenced to sterling rates.
40. Statistics published by Euronext<sup>10</sup> indicate that the total value of volume of short term interest rate contracts traded on LIFFE in London in 2011 was 477 trillion euro, including over 241 trillion euro relating to the three month EURIBOR futures contract (the fourth largest interest rate futures contract by volume in the world).<sup>11</sup> The Eurodollar futures contract traded on the CME in Chicago (which is the largest interest rate futures contract by volume in the world) has US dollar LIBOR as its

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<sup>9</sup> 'OTC derivative market activity in the first half of 2011', Bank for International Settlements (November 2011). [www.bis.org/publ/otc\\_hy1111.pdf](http://www.bis.org/publ/otc_hy1111.pdf)

<sup>10</sup> NYSE Liffe Statistics, 2006 to 30 December 2011, Product Type: Derivatives, Region: Amsterdam, Brussels, Lisbon, London, Paris. [https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse\\_liffe\\_statistics\\_dec\\_2011.xls](https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_liffe_statistics_dec_2011.xls)

<sup>11</sup> Futures Industry Association; Annual Volume Survey 2011 by Will Acworth.

reference rate. The value of volume of that contract traded in 2011 was over 564 trillion US dollars.<sup>12</sup>

41. Interest rate derivative contracts typically contain payment terms that refer to benchmark rates. LIBOR and EURIBOR are by far the most prevalent benchmark rates used in euro, US dollar and sterling OTC interest rate derivatives contracts and exchange traded interest rate contracts. Benchmark reference rates such as LIBOR and EURIBOR also affect payments made under a wide range of other contracts including loans and mortgages. The integrity of benchmark reference rates such as LIBOR and EURIBOR is therefore of fundamental importance to the integrity of both UK and international financial markets.
42. The types of interest rate derivatives contracts most relevant to the facts set out in this Notice are OTC interest rate swaps and exchange traded interest rate futures.
43. Simple OTC interest rate swaps consist of an agreement between two parties to pay each other interest on a notional amount at specified rates and dates. A plain vanilla interest rate swap will involve two payment obligations; one party will pay interest at a fixed rate and the other party will pay interest at a variable (or floating) rate at specified points over the term of the swap.
44. Payments made or received periodically on the floating leg of a euro, US dollar or sterling interest rate swap (often referred to as “reset payments” or “resets”) are most commonly defined by reference to LIBOR or EURIBOR, including in standardised derivatives contracts. Therefore changes in the LIBOR or EURIBOR rates will affect the payment obligations under most euro, US dollar and sterling interest rate swap contracts.
45. Interest rate futures are an agreement between two parties to make a payment referenced to an interest rate at an agreed price in the future. That payment, referred to as the “settlement price” is commonly defined by reference to LIBOR and EURIBOR rates. Interest rate futures contracts are traded on futures and options exchanges, such as LIFFE in the UK. Again, changes in the LIBOR or EURIBOR rates will affect the payment obligations under these futures contracts.
46. Barclays’ Derivatives Traders routinely enter into many types of derivatives contracts including OTC interest rate swaps and exchange traded interest rate futures. At Barclays the desks on which the Derivatives Traders work are known as “Swaps Desks”. Barclays’ Swaps Desks are organised by currency and subdivided into trading books which concentrate on particular maturities. For example a trader may work on the US dollar Swaps Desk trading, for example, interest rate derivatives contracts in US dollars in maturities of one month, three months, six months and one year.
47. Derivatives Traders at Barclays enter into interest rate swaps as counterparties to Barclays’ clients (in order to facilitate transactions for clients) and in order to manage interest rate risks. Derivatives Traders at Barclays may also develop trading

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<sup>12</sup> Futures Industry Association; Annual Volume Survey 2011 by Will Acworth.



strategies by which they hope to make a profit from interest rate movements. Those strategies might involve building up certain “positions”, for example by entering into several contracts paying fixed rates.

48. As described above, the payment obligations under interest rate derivatives contracts are usually defined by reference to benchmark rates such as LIBOR and EURIBOR. Barclays’ Derivatives Traders therefore stood to make profit or reduce loss through movements in LIBOR or EURIBOR rates. Barclays’ Derivatives Traders knew on any particular day what their books’ exposure to a one basis point (0.01%) movement in LIBOR or EURIBOR was.
49. For example, on any given day, the Derivatives Traders may have had exposures to LIBOR or EURIBOR in particular maturities if reset payments were owed to or by Barclays on OTC interest rate swap contracts or if the Derivatives Traders had traded interest rate futures positions settling on that day. The amount owed to or by Barclays could be affected by movements in LIBOR or EURIBOR. A beneficial movement in the relevant benchmark rates could have made the Derivatives Traders profit or reduced a loss. In relation to traded interest rate futures contracts, this would be more likely on four quarterly dates each year – the International Money Market dates (“IMM dates”).
50. The IMM dates are the third Wednesday of March, June, September and December each year and the majority of futures contracts settle on these dates<sup>13</sup> (futures contracts may also settle on the third Wednesday of any other month). For the majority of interest rate futures contracts tied to LIBOR or EURIBOR, the settlement price is calculated by reference to the final benchmark rates published by Thomson Reuters two days prior to the settlement date. Therefore the LIBOR and EURIBOR rates published on the third Monday of any month (and in particular of March, June, September and December) are of particular relevance to traders with interest rate futures positions.
51. On occasion, Barclays’ Derivatives Traders’ positions were such that they stood to benefit from the difference between certain maturities of LIBOR or EURIBOR rates (the “spread”). For example, the Derivatives Traders may have benefitted if the spread between the three month and six month EURIBOR rates was narrow. They may also have benefitted from a particular spread between different benchmark rates. For example, if the spread between three month EURIBOR and the Euro Overnight Index Average (“EONIA”)<sup>14</sup> was narrow. Barclays’ Derivatives Traders therefore had a vested interest in the final benchmark LIBOR and EURIBOR rates on any given day.

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<sup>13</sup> Adjusted by the relevant Business Day convention.

<sup>14</sup> EONIA is a benchmark rate calculated as an average of transacted rates at which overnight transactions are entered into by the same banks that contribute to EURIBOR.

## **B. Inappropriate US dollar LIBOR and EURIBOR submissions made following requests from Derivatives Traders**

52. This section (paragraphs 52 to 101) sets out the facts and matters relevant to the US dollar LIBOR and EURIBOR submissions made by Barclays following requests from Derivatives Traders as follows:
- i. the methods used by Barclays' Derivatives Traders seeking to influence Barclays' LIBOR and EURIBOR submissions by making requests for particular submissions;
  - ii. the internal communications sent by Barclays' Submitters stating that they had taken the Derivatives Traders' requests into account;
  - iii. an analysis of Barclays' US dollar LIBOR and EURIBOR submissions demonstrating that Barclays' submissions were consistent with the Derivatives Traders' requests on the majority of occasions;
  - iv. the requests sent by external traders to Barclays' Derivatives Traders, which were passed on to Barclays' Submitters; and
  - v. the attempts of Barclays' Derivatives Traders to influence the EURIBOR (and to a much lesser extent the US dollar LIBOR) submissions of other banks by making requests, including examples of co-ordinated strategies to influence the EURIBOR rates published by the EBF.

### *Internal requests for submissions from Barclays' Derivatives Traders*

53. On numerous occasions between January 2005 and June 2009, Barclays' Derivatives Traders made requests to its Submitters for submissions based on their trading positions. These included requests made on behalf of derivatives traders at other banks. The Derivatives Traders were motivated by profit and sought to benefit Barclays' trading positions. The aim of these requests was to influence the final benchmark LIBOR and EURIBOR rates published by the BBA and EBF.
54. The misconduct involving internal requests to the Submitters at Barclays was widespread, cutting across several currencies and occurring over a number of years. The Derivatives Traders discussed the requests openly at their desks. At least one Derivatives Trader at Barclays would shout across the euro Swaps Desk to confirm that other traders had no conflicting preference prior to making a request to the Submitters.
55. Requests to Barclays' Submitters were made verbally and a large amount of email and instant message evidence consisting of Derivatives Traders' requests also exists. At times, requests made by email alone were sent by the Derivatives Traders nearly every day. For example, requests were made by Barclays' US dollar Derivatives Traders on 16 out of the 20 days on which Barclays made US dollar LIBOR submissions in February 2006 and on 14 out of the 23 days on which it made US dollar LIBOR submissions in March 2006.

56. The FSA has identified that:
- i. between January 2005 and May 2009, at least 173 requests<sup>15</sup> for US dollar LIBOR submissions were made to Barclays' Submitters (including 11 requests based on communications from traders at other banks);
  - ii. between September 2005 and May 2009, at least 58 requests for EURIBOR submissions were made to Barclays' Submitters (including 20 requests based on communications from traders at other banks); and
  - iii. between August 2006 and June 2009, at least 26 requests for yen LIBOR submissions were made to Barclays' Submitters.
57. At least 14 Derivatives Traders at Barclays made these requests. This included senior Derivatives Traders. In addition, trading desk managers received or participated in inappropriate communications on, at least, the following occasions:
- i. on 22 March 2006, Trader A (a US dollar Derivatives Trader) stated in an email to Manager A that Barclays' Submitter "*submits our settings each day, we influence our settings based on the fixings we all have*". Manager A took no action as a result of this email;
  - ii. on 5 February 2008, Trader B (a US dollar Derivatives Trader) stated in a telephone conversation with Manager B that Barclays' Submitter was submitting "*the highest LIBOR of anybody [...] He's like, I think this is where it should be. I'm like, dude, you're killing us*". Manager B instructed Trader B to: "*just tell him to keep it, to put it low*". Trader B said that he had "*begged*" the Submitter to put in a low LIBOR submission and the Submitter had said he would "*see what I can do*"; and
  - iii. in July 2008, euro Derivatives Traders sent emails to Manager C indicating that they had spoken to Barclays' Submitter about the desk's reset positions and he had agreed to assist them. This followed instructions from Manager C for the traders to speak to the Submitter.
58. Barclays' Derivative Traders would request high or low submissions regularly in emails, for example on 7 February 2006, Trader C (a US dollar Derivatives Trader) requested a "*High 1m and high 3m if poss please. Have v. large 3m coming up for the next 10 days or so*". Trader C also expressed his preference that Barclays would be "*kicked out*" of the average calculation. Trader C's aim was therefore that Barclays' submissions would be high enough to be excluded from the final average calculation, which could have affected the final benchmark rate.

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<sup>15</sup> If more than one request was contained in the same communication, these have been counted separately. For example, a request for a 'high 3 month and low 6 month' would be counted as two requests. A request for a 'high 3 month for the next two days' would also be counted as two requests. A request for 'high' or 'low' submissions which did not specify a particular maturity would be counted as three requests (for one month, three month and six month submissions) unless the context of the communication indicates otherwise.

59. On Friday, 10 March 2006, two US dollar Derivatives Traders made email requests for a low three month US dollar LIBOR submission for the coming Monday:

i. Trader C stated “*We have an unbelievably large set on Monday (the IMM). We need a really low 3m fix, it could potentially cost a fortune. Would really appreciate any help*”;

ii. Trader B explained “*I really need a very very low 3m fixing on Monday – preferably we get kicked out. We have about 80 yards [billion] fixing for the desk and each 0.1 [one basis point] lower in the fix is a huge help for us. So 4.90 or lower would be fantastic*”. Trader B also indicated his preference that Barclays would be kicked out of the average calculation; and

iii. On Monday, 13 March 2006, the following email exchange took place:

Trader C: “*The big day [has] arrived... My NYK are screaming at me about an unchanged 3m libor. As always, any help wd be greatly appreciated. What do you think you’ll go for 3m?*”

Submitter: “*I am going 90 altho 91 is what I should be posting*”.

Trader C: “[...] *when I retire and write a book about this business your name will be written in golden letters [...]*”.

Submitter: “*I would prefer this [to] not be in any book!*”

60. The number of requests and the period of time over which they were made indicate that the Derivatives Traders made requests on a routine basis. Specific emails also indicate the requests were made regularly. For example, the following email exchange took place on 27 May 2005:

Submitter: “*Hi All, Just as an FYI, I will be in noon’ish on Monday [...]*”.

Trader B: “*Noonish? Whos going to put my low fixings in? hehehe*”

Submitter: “[...] *[X or Y] will be here if you have any requests for the fixings*”.

61. Trader D set calendar entries on at least 4 occasions in 2006 to remind him to make requests for EURIBOR submissions: “*Ask for Low Reset Rate*” and “*Ask for High 6M Fix*”.

62. The routine nature of the requests demonstrates that the Derivatives Traders considered Barclays took their requests into account when determining its submissions.

#### *Responses from Barclays’ Submitters*

63. Barclays’ Submitters stated to the Derivatives Traders contemporaneously on numerous occasions that they would take their requests into account. Submitters

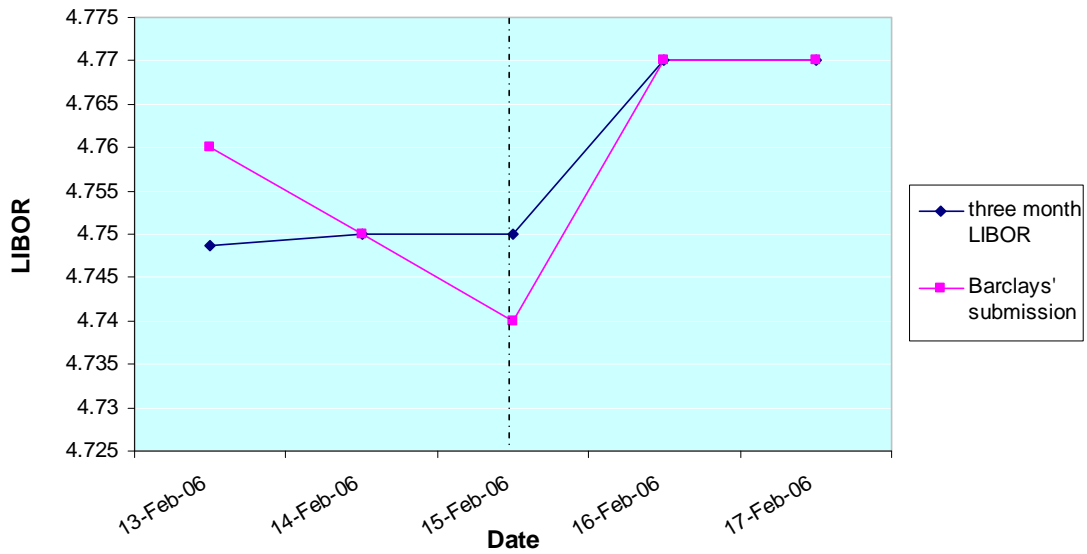
sent positive responses to Barclays' Derivative Traders on a regular basis. Examples are set out below. Certain examples record expressly that the Submitters' judgement in determining Barclays' submissions was influenced by the Derivatives Traders' requests.

64. In response to a request from Trader C for a high one month and low three month US dollar LIBOR submission on 16 March 2006, a Submitter responded: *"For you...anything. I am going to go 78 and 92.5. It is difficult to go lower than that in threes, looking at where cash is trading. In fact, if you did not want a low one I would have gone 93 at least"*.
65. Trader C requested low one month and three month US dollar LIBOR submissions at 10:52 am on 7 April 2006 (shortly before the submissions were due to be made); *"If it's not too late low 1m and 3m would be nice, but please feel free to say "no"... Coffees will be coming your way either way, just to say thank you for your help in the past few weeks"*. A Submitter responded *"Done...for you big boy"*.
66. On 29 June 2006, a Submitter responded to Trader E's request for EURIBOR submissions *"with the offer side at 2.90 and 3.05 I will input mine at 2.89 and 3.04 with you guys wanting lower fixings (normally I would be a tick above the offer side)"*.
67. On 6 August 2007, a Submitter even offered to submit a US dollar rate higher than that requested:
- Trader F: *"Pls set 3m libor as high as possible today"*
- Submitter: *"Sure 5.37 okay?"*
- Trader F: *"5.36 is fine"*
68. Evidence from certain Submitters confirms that Barclays took the Derivatives Traders' requests into account when determining its submissions. One of the Submitters adjusted Barclays' submissions one or two basis points up or down in order to comply with the requests. The numbers he submitted taking into account the Derivatives Traders' requests were different to the numbers he would have submitted absent the requests and were not consistent with the LIBOR definition. However, he thought Barclays could still have raised money at the rates submitted. Another Submitter considered it possible to justify Barclays' submissions by reference to market data even on occasions when he may have taken the Derivatives Traders' requests into account. Another Submitter denies taking the Derivatives Traders' requests into account.
69. The FSA considers that the routine nature of Barclays' Submitters' responses to the Derivatives Traders, the language used in the responses and the evidence obtained from the Submitters during the course of the investigation demonstrates that Barclays took the Derivatives Traders' requests for US dollar LIBOR and EURIBOR submissions into account on numerous occasions when determining its submissions.

*Consistency of submissions with requests*

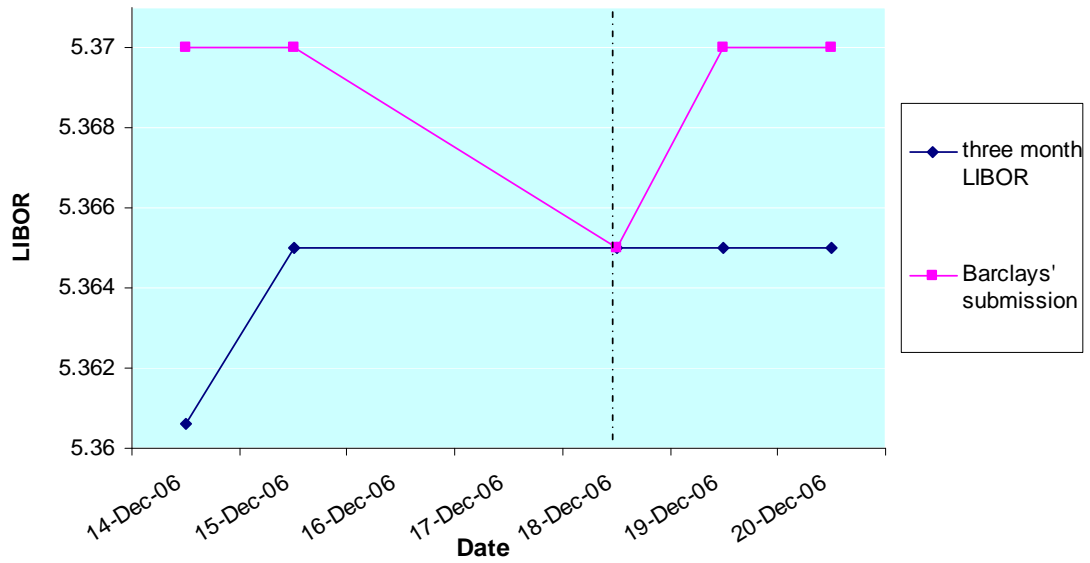
70. The FSA analysed a number of the requests as against the submissions made by Barclays. The FSA determined whether Barclays' submissions were consistent with the Derivatives Traders' requests by reviewing Barclays' submissions on the date of the requests and the day preceding the requests. The FSA also reviewed Barclays' position in the panel of contributing banks (in other words, whether Barclays' submissions were higher or lower than the other contributors' submissions) on the date of the requests and the day preceding the requests.
71. On the majority of occasions where Barclays' Submitters were contacted by Barclays' Derivatives Traders with requests, Barclays' submissions (for US dollar LIBOR and EURIBOR) were consistent with those requests:
  - i. the FSA analysed 111 requests made by Barclays' Derivatives Traders in the period from 3 January 2006 to 6 August 2007 relating to US dollar LIBOR submissions. On around 70% of those occasions the submissions were consistent with the requests. On 16% of occasions it was unclear if the submissions were consistent with the requests. On 14% of occasions the submissions were inconsistent with the requests; and
  - ii. the FSA analysed 42 requests made by Barclays' Derivatives Traders in the period from 23 February 2006 to 3 June 2008 relating to EURIBOR submissions. On 86% of those occasions the submissions were consistent with the requests. On 2% of occasions it was unclear if the submissions were consistent with the requests. On 12% of occasions the submissions were inconsistent with the requests.
72. Below are examples of graphs showing that Barclays' submissions were consistent with certain requests.
73. For example, on 15 February 2006, Trader C made a request in relation to Barclays' three month US dollar LIBOR submission: "*Please go for [unchanged], or lower if poss*". A Submitter sent a positive response to this request. The following graph illustrates the changes in Barclays' submissions as compared to the final three month benchmark rate:

**Barclays' three month US Dollar submission around 15 Feb 06**



74. The graph shows that Barclays’ three month US dollar LIBOR submission, which had been at or higher than the final benchmark rate reduced to a level below the benchmark rate on the day the Derivatives Traders requested a lower submission and then increased to the same level as the benchmark rate on the following day. Barclays’ position relative to other banks also moved down on 15 February 2006 (three banks contributed a lower three month US dollar submissions than Barclays on 14 February but no other banks contributed a lower submission on 15 February). Barclays’ submission on 15 February 2006 was therefore consistent with the request for a low three month submission.
75. On Thursday 14 December 2006, Trader F emailed a Submitter, requesting a low three month US dollar LIBOR submission for the following Monday, 18 December 2006; “*For Monday we are very long 3m cash here in NY and would like the setting to be set as low as possible...thanks*”. The Submitter instructed another Submitter to accommodate the request; “*You heard the man*” and confirmed to Trader F “[X] will take notice of what you say about a low 3 month”.
76. Two seconds later, that Submitter sent himself an electronic calendar reminder to make a low three month submission at 11 am on Monday 18 December 2006: “*USD 3mth LIBOR DOWN*”.
77. The following graph illustrates the changes in Barclays’ submissions around that date as compared to the final three month benchmark rate:

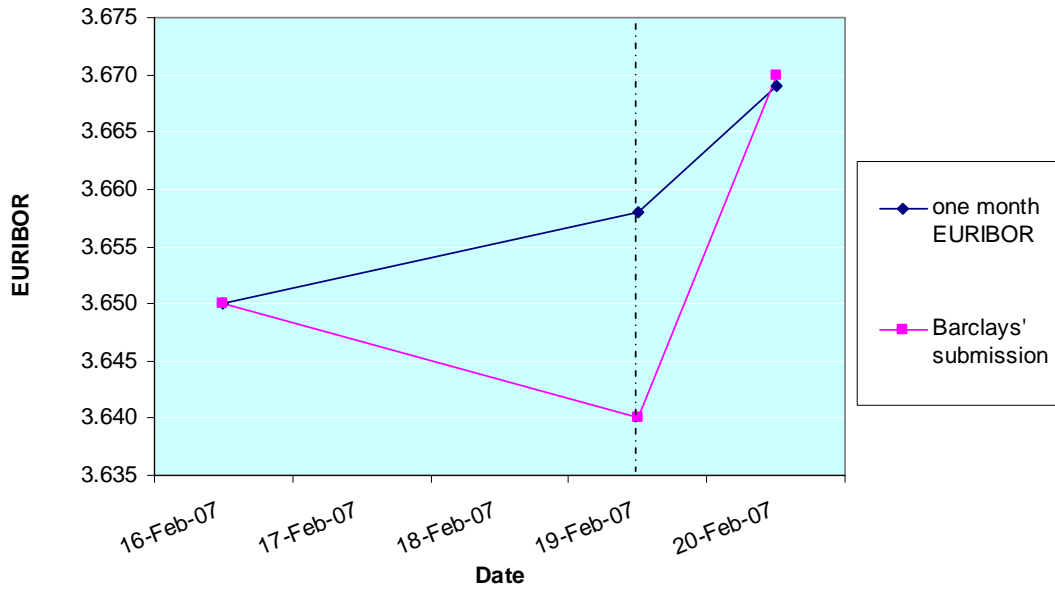
**Barclays' three month US Dollar submission around 18 Dec 06**



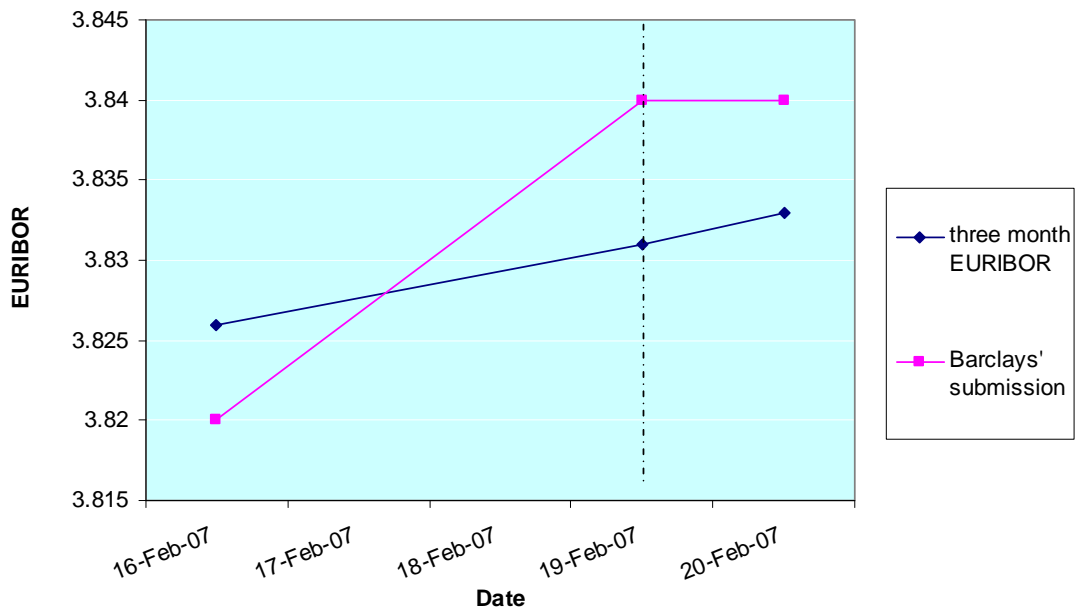
78. The graph shows that Barclays' three month US dollar LIBOR submission, which had been higher than the final benchmark rate, reduced by half a basis point to the same level as the benchmark rate for one day only (Monday 18 December 2006), which corresponded to the date of the request. Barclays' position relative to other banks also moved down on 18 December 2006 (ten banks contributed a lower three month US dollar submission than Barclays on 15 December and four banks contributed a lower submission on 18 December). Barclays' submission was therefore consistent with Trader F's request for a low three month US dollar LIBOR submission on 18 December 2006.
79. On 19 February 2007, Trader E made three requests, asking Barclays' Submitter for low one month, high three month and low six month EURIBOR submissions. The following three graphs show the changes in Barclays' submissions in those maturities around that date:



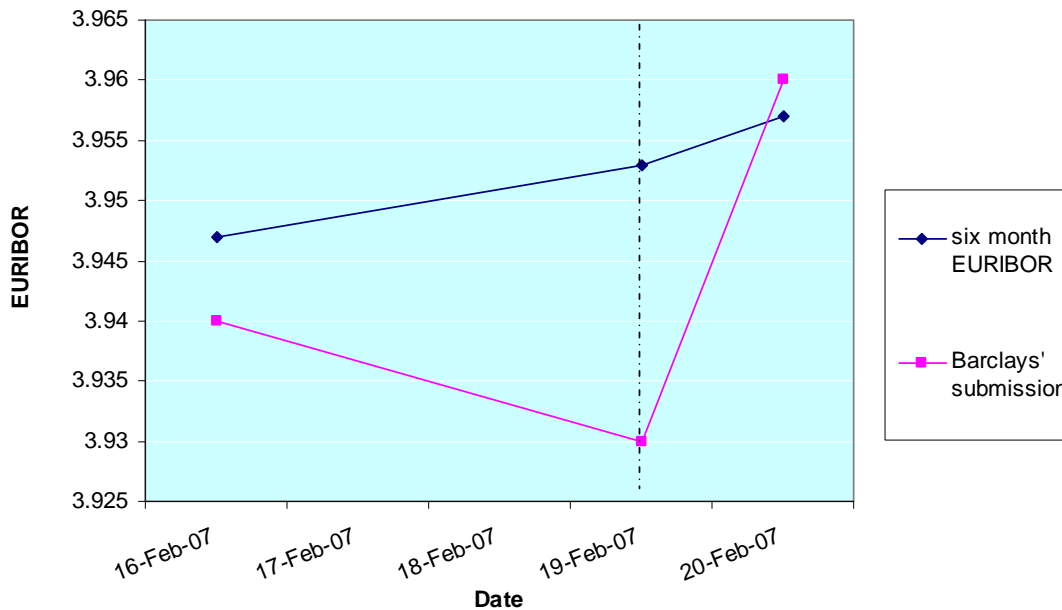
**Barclays' one month EURIBOR submissions around 19 Feb 07**



**Barclays' three month EURIBOR submissions around 19 Feb 07**



**Barclays' six month EURIBOR submissions around 19 Feb 07**



80. The graphs show that Barclays' one month, three month and six month EURIBOR submissions on 19 February 2007 were consistent with Trader E's requests for low one month, high three month and low six month submissions:
- i. Barclays' one month EURIBOR submission decreased by one basis point from the previous day. Barclays' position relative to other banks also moved down on 19 February 2007 (11 banks contributed a lower one month EURIBOR submission than Barclays on 16 February but no other bank contributed a lower submission on 19 February);
  - ii. Barclays' three month EURIBOR submission increased by two basis points from the previous day. Barclays' position relative to other banks also moved up on 19 February 2007 (26 banks contributed a higher three month EURIBOR submission than Barclays on 16 February and only one bank contributed a higher submission on 19 February); and
  - iii. Barclays' six month EURIBOR submission decreased by one basis point from the previous day. Barclays' position relative to other banks also moved down on 19 February 2007 (two banks contributed a lower six month EURIBOR submission than Barclays on 16 February and no other bank contributed a lower submission on 19 February).

*Requests from external traders*

81. The examples given above relate to requests that were made by Barclays' Derivatives Traders to benefit their own trading positions. However Barclays' Derivatives Traders also made internal requests for EURIBOR and US Dollar LIBOR submissions based on the trading positions of traders at other banks who had asked them to pass requests on to Barclays' Submitters.

82. At least 12 of the US dollar LIBOR requests made to Barclays' Submitters were made on behalf of external traders that had previously worked at Barclays and were now working at other banks (although those banks did not contribute US dollar LIBOR submissions).
83. For example, on 26 October 2006, an external trader made a request for a lower three month US dollar LIBOR submission. The external trader stated in an email to Trader G at Barclays "*If it comes in unchanged I'm a dead man*". Trader G responded that he would "*have a chat*". Barclays' submission on that day for three month US dollar LIBOR was half a basis point lower than the day before, rather than being unchanged. The external trader thanked Trader G for Barclays' LIBOR submission later that day: "*Dude. I owe you big time! Come over one day after work and I'm opening a bottle of Bollinger*".
84. At least 20 of the EURIBOR requests made by the Derivatives Traders were made on behalf of traders at other banks that contributed EURIBOR rates. Barclays' Derivatives Traders passed on the requests of these other traders to Barclays' Submitters, even blind copying in the external traders to their emails in order to demonstrate they had done so.
85. For example, on 6 September 2006, an external trader at another bank (Panel Bank 1) contributing EURIBOR submissions sent an instant message to Trader E at Barclays requesting a low one month submission: "*I seriously need your help tomorrow on the 1mth fix*". The next day, Trader E passed on the request to Barclays' Submitters, blind copying in the external trader.
86. On 1 February 2007, the same external trader sent several messages to Trader E requesting a low one month EURIBOR submission. Trader E in turn made a request for a low one month submission to a Submitter, who sent a positive response.
87. Barclays' Submitters also received 11 requests for sterling LIBOR submissions from an external trader at another bank (who had previously worked at Barclays). These requests were not taken into account.

*Attempts to influence other banks' submissions*

88. Barclays' Derivatives Traders attempted to influence the EURIBOR (and to a much lesser extent, US dollar LIBOR) submissions of other banks by making requests to external traders. One of the Derivatives Traders also embarked on co-ordinated strategies to align Barclays' positions with traders at other banks and to influence the EURIBOR rates published by the EBF.
89. Between February 2006 and October 2007, Barclays' Derivatives Traders made at least 63 requests to external traders with the aim that those traders would pass on the requests for EURIBOR and US dollar LIBOR submissions to their banks' submitters. 56 of those requests related to EURIBOR submissions. Five Derivatives Traders made the requests to external traders.
90. For example, on 7 July 2006, Trader E made an internal request to a Submitter for a low one month EURIBOR submission. Trader E also made the same request to

external traders at Panel Bank 1 and Panel Bank 2.

91. On 28 February 2007, Trader B made a request to an external trader in relation to three month US dollar LIBOR “*duuuude... whats up with ur guys 34.5 3m fix...tell him to get it up!!*” The external trader responded “*ill talk to him right away*”.
92. On occasion, more concerted efforts were made to influence both Barclays’ and other banks’ EURIBOR submissions, consisting of a series of communications over the course of time. In several key examples, one of Barclays’ Derivatives Traders co-ordinated with external traders to try to influence EURIBOR submissions at Barclays and other banks during the Relevant Period (and that trader instructed more junior Derivatives Traders at Barclays to do the same).
93. Barclays’ Derivatives Traders co-ordinated with external traders using the following methods:
  - i. making internal requests to Barclays’ Submitters;
  - ii. making external requests to traders at other contributing banks in advance of and on particular days on which the Derivatives Traders stood to benefit; and
  - iii. on occasion by encouraging cash traders to make bids or enter into transactions in the money markets at rates which might influence indirectly the EURIBOR submissions of any contributing bank observing market rates as a factor in determining its submissions.
94. For example, from early October 2006, Barclays’ Derivatives Traders communicated with others in order to co-ordinate high one month EURIBOR submissions on 16 October 2006. These communications included the following:
  - i. Trader E made internal requests for high one month EURIBOR submissions to Barclays’ Submitters;
  - ii. Trader E discussed his requests with an external trader at Panel Bank 1 and made requests to external traders at Panel Banks 2 and 3;
  - iii. the external trader at Panel Bank 1 informed Trader E he would also make a request to a trader at Panel Bank 4; and
  - iv. a cash trader at Barclays indicated that Barclays would be paying for cash that morning, “*so hopefully that will help*” (the logic being that if Barclays entered into cash transactions this might influence indirectly the EURIBOR submissions of other contributing banks).
95. From early November 2006, Trader E (having agreed to assist an external trader at Panel Bank 1) communicated his preference for a EURIBOR of “36” or a low one month EURIBOR submission on 13 November 2006. These communications included the following:
  - i. Trader E made an internal request for a low one month EURIBOR submission to a Submitter at Barclays on Friday, 10 November 2006 and sent a reminder on

Monday, 13 November 2006;

- ii. the Submitter responded positively on 10 November 2006, “*of course we will put in a low fixing*” and on 13 November indicated they would make a submission lower than the Brokers thought EURIBOR would set that day, “*no problem. I had not forgotten. The brokers are going for 3.372, we will put in 36 for our contribution*”;
  - iii. Trader E made a request to an external trader at Panel Bank 2;
  - iv. Trader E informed the trader at Panel Bank 2 that he and another trader had large positions (of 15 billion euro and 85 billion euro respectively) that would benefit from a low one month EURIBOR rate on 13 November 2006; and
  - v. Trader E also made a request to an external trader at Panel Bank 3 and attempted to make a request to a trader at Panel Bank 5 following consultation with a trader at Panel Bank 1.
96. There are communications relating to the EURIBOR futures contracts expiring in March 2007 as early as December 2006. 19 March 2007 was the Monday prior to the third Wednesday in March (an IMM date) and therefore relevant to the settlement price of exchange traded interest rate futures contracts expiring in March 2007 (see paragraphs 49 and 50 above for further explanation). The communications reveal that:
- i. Trader E intended to “*go long the march future*”, in other words to build up a trading position in interest rate futures contracts that would benefit from a low three month EURIBOR rate. Trader E also stated in an internal email that he understood a trader at Panel Bank 1 and an individual at a hedge fund were also building up long positions. If a trader had a long position in futures contracts referenced to three month EURIBOR expiring in March 2007, he would benefit from a low three month EURIBOR rate on 19 March 2007 (the Monday prior to the third Wednesday in March, an IMM date);
  - ii. Trader E also indicated that he would benefit from a particular spread between three month EURIBOR and EONIA on that date (EONIA is a reference rate based on transacted rates);
  - iii. Trader E communicated with traders at Panel Banks 1, 2 and 6 in advance of the IMM date. For example on 12 February 2007, Trader E stated in an instant message with a trader at Panel Bank 6:  
  
*“if you know how to keep a secret I’ll bring you in on it [...]  
we’re going to push the cash downwards on the imm day [...]  
if you breathe a word of this I’m not telling you anything else [...]  
I know my treasury’s firepower... which will push the cash downwards [...]  
please keep it to yourself otherwise it won’t work”.*
  - iv. Trader E’s communications continued in the build up to 19 March 2007 and on Friday, 16 March 2007 (the last working day prior to 19 March 2007), Trader E made requests for a low three month EURIBOR submission to traders at Panel

Banks 2 and 3 (which he discussed with a trader at Panel Bank 1);

- v. Trader E made further requests on Monday, 19 March 2007, including asking a trader at Panel Bank 6 to *“tell your cash to put the 3m fixing in the basement”*;
  - vi. Trader E also made an internal request for a low three month submission to a Submitter at Barclays on 19 March 2007; and
  - vii. Trader E also attempted to influence Barclays’ cash trading strategy in order to affect contributing banks’ EURIBOR submissions indirectly. An external trader noted that he understood Barclays was making bids in the market for three month cash on 19 March 2007. This appears to have been communicated to Trader E at Barclays, who then contacted the cash trader bidding in the market. Barclays stopped bidding for three month cash thereafter.
97. Various instant messages exchanged after the final benchmark rates were published on 19 March 2007 indicated that the traders involved considered that their strategy had been successful. Trader E commented to the external trader at Panel Bank 6 *“this is the way you pull off deals like this chicken, don’t talk about it too much, 2 months of preparation [...] the trick is you must not do this alone [...] this is between you and me but really don’t tell ANYBODY”*.
98. Other individuals with no apparent vested interest in the strategy commented on the EURIBOR rates on 19 March 2007. Trader D stated in an instant message to an external trader *“look at the games in EURIBOR today [...] I am sure a few names made a killing”*. A trader at a hedge fund communicated with Trader E, also on 19 March 2007, stating *“it’s becoming dangerous to trade in 3m inms [...], especially when Barclays sets the 3m very low [...] it does draw attention to you guys. It doesn’t look very professional”*.

*Conclusion on inappropriate submissions made following requests from Derivatives Traders*

99. The FSA considers that it is clear that Barclays took the Derivatives Traders’ requests into account on numerous occasions when determining its US dollar LIBOR and EURIBOR submissions, on the basis of:
- i. the requests made by the Derivatives Traders, the frequency and regular nature of those requests;
  - ii. the positive responses to those requests by Barclays’ Submitters;
  - iii. the evidence of certain Submitters; and
  - iv. the consistency of Barclays’ submissions with its Derivatives Traders’ requests.
100. The LIBOR and EURIBOR definitions require submissions from contributing banks based on borrowing or lending in the interbank market. The definitions do not allow for consideration of derivatives traders’ positions.
101. Barclays also attempted to influence the EURIBOR (and, to a much lesser extent US

dollar LIBOR) submissions of other contributing banks.

### **C. Inappropriate LIBOR submissions to avoid negative media comment**

102. This section (paragraphs 102 to 145) deals with Barclays' approach to determining LIBOR submissions between September 2007 and May 2009. In summary:
- i. liquidity conditions changed dramatically from mid 2007 and this made it more difficult for banks to determine the correct LIBOR submissions to make to the BBA;
  - ii. senior management at high levels within Barclays were concerned over the negative media perception of Barclays' LIBOR submissions in September 2007;
  - iii. those concerns led to instructions being given by less senior managers to Barclays' Submitters to lower their LIBOR submissions at particular times of market stress in late 2007 and early 2008 in order to avoid negative media comment;
  - iv. for the majority of the time the instructions operated to reduce Barclays' submissions such that they did not stand out too far from the submissions of other contributing banks. Barclays believed that other banks were making LIBOR submissions that were too low and did not reflect market conditions. Barclays' LIBOR submissions continued to be high relative to other contributing banks' submissions during the financial crisis;
  - v. individuals at Barclays raised concerns with the FSA, the Bank of England, the Federal Reserve Bank of New York and the BBA about the accuracy of LIBOR submissions generally (and on occasion referred to Barclays' own approach to setting LIBOR);
  - vi. the BBA conducted a consultation and review of the LIBOR submissions process from June to August 2008; and
  - vii. Barclays contributed to that review, yet, when liquidity conditions again deteriorated in September 2008, continued to instruct its Submitters to reduce submissions in order to avoid negative media comment even after the review had concluded that the existing process should be retained and that such considerations should not be taken into account.

#### *LIBOR during the financial crisis*

103. Liquidity conditions in the money market in London changed significantly following the onset of the financial crisis. In the latter half of 2007 and throughout 2008, lending in London for maturities longer than overnight came to a virtual standstill and there was extreme dislocation in global money markets.
104. Liquidity issues became a particular focus in the media as the crisis worsened from the collapse of Northern Rock in September 2007 to the acquisition of Bear Stearns by JP Morgan in March 2008 and beyond. By the third quarter of 2008 the focus turned to questions of the solvency of financial institutions, following Lehman

Brothers' insolvency filing in September 2008 and the failures of RBS and HBOS in October 2008.

105. The changes in liquidity conditions from September 2007 affected the way in which banks determined their LIBOR submissions. For example, there was very limited lending in the money markets. Therefore the frequency and average size of transactions which could be considered by LIBOR submitters in determining their submissions were very limited.
106. However, the nature of the judgement required by the LIBOR definition remained the same throughout this period and at the outset of the crisis, banks were asked by the BBA to determine submissions on a sensible best endeavours basis.

*Concern over media attention on Barclays' submissions*

107. There was increased public scrutiny of LIBOR from August 2007, as a consequence of the focus on liquidity conditions at that time, including attention being drawn to contributing banks' LIBOR submissions by the media.
108. Barclays received negative publicity from the media for a number of reasons connected to liquidity issues. For example towards the end of August 2007, Barclays had been identified as having borrowed from the Bank of England's emergency standby facility twice in a fortnight.
109. Around the same time, Barclays' LIBOR submissions appeared high in comparison to other banks' submissions. A Submitter commented in an email internally on 28 August 2007 "*Today's USD libors have come out and they look too low to me [...] Probably the lowest rate you [could] attract liquidity in threes would be 5.55% and I am not too sure how much you would get at that level. For that reason I went 5.58%, perhaps a bit high but realistic [...] It is true to say that, if a lender has room for your name, you can achieve very attractive funding levels at a rate well below libor. It would however be imprudent to assume that it is always going to be the case that investors have credit open for your name, especially in view of the general reluctance to place money longer than one month. Draw your own conclusions about why people are going for unrealistically low libors*". The Submitter believed that Barclays was submitting US dollar LIBOR at an appropriate level at that time, but by the next day he indicated that Barclays (and in his view other banks) should be submitting LIBOR at a higher level.
110. Barclays' LIBOR submissions were at the higher end of the range of contributing banks during the financial crisis. For example, in the period from 1 September 2007 to 31 December 2008, Barclays' three month US dollar LIBOR submissions were higher than the submissions of 12 other contributing banks on 66% of occasions. Barclays' three month US dollar submissions were either within the highest four contributions or tied with another bank in that position on 89% of occasions.
111. The fact that Barclays' LIBOR submissions were higher than those of the other contributing banks drew attention from the media. For example, Bloomberg



published an article entitled “*Barclays takes a money market beating*” on 3 September 2007.<sup>16</sup> The article noted that Barclays’ LIBOR submissions in three month sterling, euro and US dollars were the highest of all banks contributing LIBOR submissions. The article posed the question “*what the hell is happening at Barclays and its Barclays Capital securities unit that is prompting its peers to charge it premium interest rates in the money market?*”

112. Senior management at high levels within Barclays expressed concerns over this negative publicity. Senior management’s concerns in turn resulted in instructions being given by less senior managers to Barclays’ Submitters to reduce LIBOR submissions in order to avoid further negative media comment.
113. On 4 September 2007, a Submitter indicated in an internal telephone conversation that Barclays’ US dollar LIBOR submissions were below the rates at which he saw offers in the market. He indicated in another internal call on the same day that there was “*internal political*” pressure on him not to set higher.
114. From September 2007 onwards, Barclays determined its LIBOR submissions whilst taking senior management’s concerns about negative media comment into account. This conduct was not confined to US dollar LIBOR submissions. For example, a Submitter stated in an email dated 25 September 2007 that Barclays would “*try to get our JPY libors a little more in line with the rest of the contributors, or else the rumours will start flying about Barclays needing money because its libors are so high*”.

#### *Instructions given in late 2007 and early 2008*

115. Concerns about the media perception of high LIBOR submissions continued at intervals for the remainder of 2007 and throughout 2008. At times of particular market stress this resulted in instructions being given to Barclays’ LIBOR Submitters to reduce Barclays’ submissions such that they did not stand out too far from the submissions of other contributing banks. This was expressed by Manager D (in Barclays’ Group Treasury) as an instruction that Barclays should not “*stick its head above the parapet*” in terms of its LIBOR submissions.
116. As a result, Barclays reduced its submissions on many occasions so that they were not too high compared to other banks. For example, on 16 November 2007, a Submitter indicated in an internal email that Barclays was “*going 4.98 for libor only because of the reputational risk...Basically the[re] is no money out there*”. Another Submitter stated in response that LIBOR was being set “*unrealistically low*”. On 19 November 2007, a Submitter stated in an internal email that he had been asked by Manager D “*to keep the libors within the group (pressure from above)*”.
117. Barclays believed that the submissions of other contributing banks were inappropriate during the financial crisis. For example, in mid-November 2007, a Submitter at Barclays commented that other banks’ LIBOR submissions were two basis points lower than he considered appropriate (although, as noted above the

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<sup>16</sup> Bloomberg: Barclays Takes a Money-Market Beating: Mark Gilbert, 3 September 2007.

LIBOR definition is a subjective judgement on the part of each bank contributing rates). By 28 November 2007, that Submitter stated in an internal email that “LIBORs are not reflecting the true cost of money. I am going to set 2 and 3 months, 5.13 and 5.12 probably at the top of the range of rates set by libor contributors, although brokers tell me that [Panel Bank 7] is going to set at 5.15 for both (up 8.5 and 10 from yesterday). The true cost of money is anything from 5-15 basis points higher. Not really sure why contributors are keeping them so low but it is not a good idea at the moment to be seen to be too far away from the pack, although reality seems to be setting in for a few libor contributors who are belatedly moving libors up in line with where money is really trading”. Manager D replied “Fine on LIBOR settings - thanks for remaining pragmatic but at the upper end”.

118. On 29 November 2007, all the contributing banks’ submissions for one month US dollar LIBOR increased by a range of 35 to 48 basis points. Barclays’ submission increased from 4.86 on 28 November to 5.3 on 29 November (an increase of 44 basis points). The offer that Barclays saw in the market was 30 basis points higher, at 5.60. Barclays’ Submitter had intended to submit a rate of 5.50 on that day. However he was overruled on a conference call during which the submissions were discussed, as a rate of 5.50 was expected to draw negative media attention (as this would have been 20 basis points above the next highest submission). Manager E said on the call that “it’s going to cause a shit storm”. Barclays therefore submitted a rate of 5.30, which was in line with another contributing bank’s submission that day.
119. In late 2007, Barclays decided it would be appropriate to contact the BBA and FSA to discuss its concerns about LIBOR generally (see paragraphs 125, 126, 172 and 173).
120. The instructions to reduce Barclays’ LIBOR submissions continued in operation in 2008. For example, after Bear Stearns was acquired by JP Morgan on 17 March 2008, there was another period of extreme illiquidity in the market. In telephone calls around 17 March 2008, Barclays’ Submitters were told to set their LIBORs where the rest of the market was setting them (rather than reducing Barclays’ submissions only so that they were not higher than those of other contributing banks). For example, in a telephone call on Monday, 17 March 2008, a Submitter asked Manager E “I presume, that you want me now to set [Barclays’] LIBORs...exactly where the market is setting them?” Manager E confirmed that he did.
121. Prior to that telephone call (on Friday, 14 March 2008):
  - i. Barclays’ one month US dollar LIBOR submission was 2.78 and only one other contributing bank submitted a higher rate;
  - ii. Barclays’ six month US dollar LIBOR submission was 2.7 and Barclays was the highest submitter; and
  - iii. Barclays’ 12 month US dollar LIBOR submission was 2.63 and Barclays was the highest submitter.

122. Following that telephone call, on Monday, 17 March 2008, Barclays reduced its submissions:
- i. Barclays' one month US dollar LIBOR submission was 23 basis points lower than its previous submission and eight other contributing banks submitted a higher rate;
  - ii. Barclays' six month US dollar LIBOR submission was 33 basis points lower than its previous submission and five other contributing banks submitted a higher rate; and
  - iii. Barclays' 12 month US dollar LIBOR submission was 46 basis points lower than its previous submission and seven other contributing banks submitted a higher rate.
123. On 19 March 2008, one Submitter instructed another to reduce Barclays' submissions during a telephone conversation: "*just set it where everyone else sets it, we do not want to be standing out*".
124. Therefore Barclays continued to take concerns about negative media comment into account when determining its LIBOR submissions in late 2007 and early 2008.

*Concerns raised externally by Barclays*

125. Barclays discussed liquidity issues with external entities such as the FSA, the Bank of England and the Federal Reserve Bank of New York during the financial crisis in routine liquidity calls. At times information about Barclays' liquidity position was relayed to the FSA on a daily basis. During certain of these liquidity calls, between November 2007 and October 2008, Barclays described to these external entities its perception that other banks appeared to be understating their LIBOR submissions. On occasion Barclays made comments about its own approach to submitting LIBOR. Barclays had similar conversations with the BBA and believed that it had disclosed its approach to the BBA.
126. However, the comments made to the FSA did not fully reflect Barclays' conduct. For example, on 5 December 2007, Manager D stated (in an internal telephone conversation with Manager E) that he had "*touched on [the] topic*" of LIBOR submissions at a meeting with the FSA. Manager D stated "*we didn't say anything along the lines of, you know, we're not posting where we think we should [...] because of. I just talked about dislocations, LIBORs [...] and kept it [...] simple, shall we say*". Barclays also contacted the FSA on 6 December 2007 in relation to LIBOR (see paragraph 173 below).
127. On one occasion, Barclays provided the FSA with inaccurate information about its ability to obtain funding relative to LIBOR. On 5 March 2008, the FSA contacted Barclays' Money Market Desk to ask for information about Barclays' liquidity position. The FSA asked a Submitter to provide information including the rates at which Barclays was currently paying for funding in various maturities. The Submitter intended to state that Barclays was paying for one year funding at "*LIBOR plus twenty [basis points]*". The Submitter discussed this in a telephone conversation with Manager D. Manager D stated "*yeah, I wouldn't go there for the*

*moment [...] I would rather we sort of left that at like zero or something". The Submitter stated "it's a sad thing really, because, you know, if they're truly trying to do something useful [...] it would be nice if they knew", but went on to acknowledge he had been worried about stating the "honest truth" because it might be a "can of worms". Barclays informed the FSA it was paying for one year funding at "LIBOR flat".*

128. In a routine liquidity call with the FSA on 27 March 2008, Manager D referred to the lack of term money in the market and the affect of this on LIBOR: *"some people consider LIBORs to be being set too low, but then others reply, well they're not being set too low because there aren't really any offers there. However we're not getting much feedback generally that people are, can-, objecting to that LIBORs are too high, too low, or wrong. I think people just generally recognize that in the absence of actual flows in those periods, where LIBORs are being posted, is perhaps as good [an] indication as anything [...] So if, if transactions aren't really going on, or there are only odd transactions with certain names, then i- what is the right LIBOR?"*. Manager D made further comments about the accuracy of LIBOR generally, the difficulty in determining LIBOR submissions given market conditions and explained the calculation methodology of the final rates. He also stated that Barclays had been *"picked upon for posting LIBORs above everybody else"* in 2007. Manager D went on to say *"what is everybody, open brackets to be honest, including ourselves close brackets, going to do? Keep their heads below the parapet and not stick out"*. When questioned about the LIBOR calculation, Manager D replied *"the methodology works but if the inputs are lacking [...] whatever the methodology, is still going to quote, have a problem"*.
129. By April 2008, there was a more general perception that contributing banks' LIBOR submissions were not reflecting adequately conditions in the London interbank market. For example, this was reflected in a Wall Street Journal article published on 16 April 2008.<sup>17</sup>
130. On the same day a Submitter discussed Barclays' US dollar LIBOR submissions in a telephone conversation with Manager D. They referred to the Wall Street Journal article and the submissions of another contributing bank, which appeared to the Submitter to be too low. The Submitter stated *"I've got to say though [...] I'd be doing the same [...] I would be paying [...] let's call it 298 today and I'm going to be setting my LIBOR at 74 and I'm as guilty as hell"*. Manager D told the Submitter that he was *"happy for you to be at and around the top of the pack but can we please not sort of be ten basis points above"*.
131. On 17 April 2008, Manager D made comments in a liquidity call to the FSA indicating that Barclays had been understating its LIBOR submissions: *"we did stick our head above the parapet last year, got it shot off, and put it back down again. So, to the extent that, um, the LIBORs have been understated, are we guilty of being part of the pack? You could say we are. We've always been at the top end and therefore one of the four banks that's been eliminated. Um, so I would, I would sort of express*

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<sup>17</sup> Wall Street Journal: Bankers Cast Doubt on Key Rate Amid Crisis: Carrick Mollenkamp, 16 April 2008.

*us maybe as not clean clean, but clean in principle*". Barclays made similar comments to the BBA and the Federal Reserve Bank of New York.

132. Barclays' communications with external entities were not however, consistent. On 29 May 2008 an individual at Barclays was quoted in the press as saying that banks had routinely misstated borrowing costs to the BBA to avoid the perception they faced difficulty raising funds during the crisis.
133. Barclays agreed on a response to press queries internally which consisted of a statement that Barclays had always quoted accurate and fair LIBORs and had acted "*in defiance of the market*" rather than submitting incorrect rates. An internal email from an individual in Barclays' corporate communications department on 29 May 2008 also stated that the press had been told that:
- *"We quoted higher LIBORs at the time as we saw the stress in the market early*
  - *Other banks followed us subsequently*
  - *LIBORs rose, we moved to the middle of the pack as investors took off risk positions and we were a net beneficiary as investors deposited their cash with us and therefore we were able to move LIBORs in relat[ion] to other banks*
  - *We do not want the market to think we misled it, so we have been robust to ensure this quote is not misunderstood*
  - *We have said on the record that we always quote accurate and fair LIBORs*".
134. Barclays' press briefing did not fully reflect its approach to determining its LIBOR submissions during the financial crisis.

#### *BBA consultation and review*

135. Barclays received communications from the BBA on several occasions during the financial crisis, including in the period following publication of the Wall Street Journal article, on 17 April 2008 and 2 May 2008. These communications referred to concerns that had been raised with the BBA about the accuracy of LIBOR submissions, and in particular that some banks' US dollar LIBOR submissions were being made at levels that did not reflect the LIBOR definition because of concerns about attracting negative media attention. The BBA communications made clear that if true, this was unacceptable.
136. On 10 June 2008, the BBA published a consultation paper in response to concerns being raised about the accuracy of LIBOR rates at that time. The paper sought comments on certain proposals to modify LIBOR, including in response to concerns about negative media perception of high LIBOR submissions: "*the BBA proposes to explore options for avoiding any stigma whilst maintaining transparency*". The BBA's paper stated that contributors were continuing to make submissions in accordance with the LIBOR definition "*at the rate their cash desks perceive they can raise cash in the specified currency*".
137. Barclays was one of the institutions that provided comments to the BBA in response to this paper. Barclays' response did not explain that Barclays had not been making submissions in accordance with the LIBOR definition. Liquidity conditions had eased during the consultation period. Barclays' response to the BBA was made by

Manager D, who had given instructions to Barclays' Submitters to reduce Barclays' LIBOR submissions from November 2007 onwards. Compliance was not involved in Barclays' response.

138. The BBA published a 'Feedback Statement' on its consultation paper on 5 August 2008. The paper stated:

*"In conclusion, all contributing banks are confident that their submissions reflect their perception of their true costs of borrowing at the time at which they submitted their rates. They are therefore prepared to continue with their individual quotes being published with the day's LIBOR rates. As there was no real support for any of the proposals to limit stigmatisation, the FX & MM Committee has therefore decided to retain the existing process"*.

139. At the same time as publishing this Feedback Statement, the BBA first published guidance which amplified the definition of LIBOR. This amplification stated *"the rate at which each bank submits must be formed from that bank's perception of its cost of funds in the interbank market"*.<sup>18</sup>

140. When liquidity conditions deteriorated in September 2008 (following Lehman Brothers' insolvency filing) Barclays again factored senior management's concerns about negative media attention into its LIBOR submissions process. Even after the BBA review, on which Barclays' commented, Barclays' Submitters continued to receive instructions to reduce their LIBOR submissions.

141. For example, on 18 September 2008, a Submitter stated in a telephone conversation with Manager D that he would put in a one month US dollar LIBOR submission of 4.75 because that was where he had obtained money in the market. Barclays' two month and three month submissions were also discussed. The Submitter agreed to lower Barclays' one month LIBOR submission to 4.50. The next highest submission was 50 basis points lower than Barclays' submission on that day.

142. On 8 October 2008, a Submitter was asked about Barclays' LIBOR submissions during a telephone conversation. He responded that "[Manager E]'s asked me to put it lower than it was yesterday ... to send the message that we're not in the shit". Barclays' submission the day before had been 5.05, which was 25 basis points higher than the next highest contributor. Barclays' submission on 8 October 2008 was still the highest submission, but equal with one other contributor.

143. During this period, Barclays continued to believe that other banks were making LIBOR submissions that were too low and did not reflect market conditions. Submitters continued to make comments indicating that Barclays' submissions were being made taking concerns about negative media comment into account until May 2009 (although relevant communications were more sporadic after October 2008).

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<sup>18</sup> Modifications were made to the BBA's amplification of the definition on 18 December 2008 and 19 June 2009.

*Conclusion on Barclays' LIBOR submissions during the financial crisis*

144. Barclays made LIBOR submissions which took into account concerns to avoid negative media comment from September 2007 until May 2009. This occurred in large part owing to the circumstances of the financial crisis and the liquidity conditions in the market at the time. The LIBOR definition requires submissions from contributing banks based on borrowing or lending in the interbank market and does not allow for consideration of negative media comment.
145. Barclays did raise concerns externally about the LIBOR submissions of other banks (which Barclays perceived to be understated) and on occasion referred to its own approach to submitting LIBOR. However, these comments did not fully explain Barclays' approach and were inconsistent. Barclays contributed to the BBA's review of the LIBOR submissions process in 2008, but did not explain its approach to setting LIBOR at times of market stress in its response to the consultation. Barclays continued to take negative media comment into account when making LIBOR submissions even after the BBA's review had concluded.

**D. Barclays' systems and controls**

146. This section (paragraphs 146 to 161), sets out the facts and matters relevant to Barclays' systems and controls around its LIBOR and EURIBOR submissions processes as follows:
  - i. Barclays had no specific systems and controls relating to its LIBOR or EURIBOR submissions processes until December 2009;
  - ii. there were points at which Barclays could have improved the systems and controls related to its LIBOR submitting process (following the BBA's review in 2008 and on occasions when the BBA published additional guidance relevant to the process); and
  - iii. there were points at which Barclays could have improved the systems and controls relating to its EURIBOR submitting process (when the EBF published additional guidance relevant to the process).

*Lack of systems and controls*

147. Barclays had no specific systems and controls relating to its LIBOR or EURIBOR submissions processes until at the earliest December 2009. For example it did not:
  - i. put in place policies giving clear guidance about the importance of the integrity of the process for determining LIBOR and EURIBOR submissions;
  - ii. provide training to its Submitters about the submissions process and the appropriateness of requests for favourable submissions;
  - iii. carry out formal monitoring of the submissions it made. There was no formal monitoring of anomalous submissions until April 2010 and no spot checks on the level of Barclays' actual transactions in the interbank market

as against the submissions made until May 2010; or

- iv. conduct a review of the integrity of the processes for submitting LIBOR and EURIBOR rates until 2010 at the earliest.
148. Barclays did not believe the submission of LIBOR was an area of significant risk.
149. In addition, during the Relevant Period, there were no clear lines of responsibility for systems and controls on Barclays' Money Markets Desk. The FSA interviewed three different managers with some responsibility for the Money Markets Desk. Each gave a different answer when questioned as to who was responsible for ensuring that there were adequate systems and controls on the Money Markets Desk. None of these managers accepted that they had responsibility.

*Changes to BBA process requirements*

150. Barclays had opportunities to review the systems and controls relevant to its LIBOR submissions on several occasions during the Relevant Period. For example, during the course of the BBA's review, Compliance received an email summarising the BBA's review and attaching a link to the BBA's Feedback Statement on 5 August 2008. However Compliance (who did not contribute to Barclays' response to the BBA review) did not review relevant systems and controls following receipt of the Feedback Statement.
151. Following the BBA's review, on 17 November 2008, the BBA's FX & MM Committee issued a paper setting out the proposed methodology for how enhanced LIBOR governance and scrutiny would operate in the future. This appended a draft document setting out required procedures for LIBOR submitters, which was circulated in its final form on 16 July 2009 to all contributing banks as the "Contributor Terms of Reference". This set out how LIBOR rates should be determined and required firms to have their internal processes for submitting rates audited as part of their firm's annual compliance procedures. Barclays signed the Contributor Terms of Reference but made no changes to its systems and controls as a result and did not carry out a review of submissions made in 2009.
152. The FX & MM Committee also adopted guidelines for contributors (the "BBA Guidelines") on 19 October 2009. These were circulated to all contributor banks on 2 November 2009. The BBA Guidelines were intended to ensure that when calculating their LIBOR rates all contributing banks applied the factors which influenced their rates in the same manner. The BBA Guidelines covered:
- i. the requirements on contributing banks when making submissions at times of extremely restricted liquidity in particular maturities and currencies;
  - ii. expectations regarding consistency in each contributing bank's submissions from one day to the next; and
  - iii. the use of market intelligence and external indicators by contributing banks when forming LIBOR rates.
153. Barclays made no changes to its systems and controls to take account of the BBA



Guidelines.

154. Barclays started to improve its systems and controls in late 2009. In December 2009, Barclays implemented policies and procedures relevant to the Money Markets Desk (the “December 2009 Policy”). This did cover in part procedures for submitting LIBOR. However the December 2009 Policy:
- i. did not set out or make any reference to either the Contributor Terms of Reference or the BBA Guidelines;
  - ii. did not require any records to be kept even though Barclays had agreed to audit its processes and to allow the BBA to require information from it on an ad hoc basis; and
  - iii. did not include any guidance concerning internal or external communications relating to LIBOR or conduct that would be inappropriate in connection with setting LIBOR.
155. Barclays continued to improve its systems and controls by introducing compliance checks for anomalous submissions in April 2010, and circulating management information which also contained information about Barclays’ transacted rates from May 2010. In June 2010, guidance relating to LIBOR submissions (the “June 2010 Policy”) was circulated by email to the Submitters. The June 2010 Policy set out “*fundamental rules*” to be followed in connection with LIBOR. For example, Barclays required that:
- i. “*all verbal comment outside the LIBOR setting team for a particular currency should be made only on recorded lines on the desk*”;
  - ii. “*any advance discussion of Barclays’ LIBOR submissions each day prior to setting must be strictly limited to those charged with setting Barclays’ LIBOR submission for the particular currency in question and their managers*”;
  - iii. Submitters should “*not have any communications with other banks or market participants that could be seen as an attempt to agree on or impact LIBOR levels*”; and
  - iv. “*any attempt by anyone internally or externally to influence LIBOR submissions must be promptly reported to BARCAP Legal and BARCAP Compliance*”.
156. The Submitters (and other relevant personnel) were required to confirm they had read, understood and would act in accordance with the June 2010 Policy. Barclays continued to consider its systems and controls and to make relevant enhancements after June 2010.

*EURIBOR policies and procedures*

157. Banks which contribute EURIBOR rates are required to follow the EURIBOR Code of Conduct. The EBF wrote to contributing banks on 12 November 2007, reminding the banks of their obligations to comply with the Code, stating “*to avoid unwanted negative consequences, the panel banks are invited to ensure and maintain systematic*

*and close control in their daily quotations to effectively provide accurate information for the daily calculations of the EURIBOR reference rate [...] it is incumbent upon all involved institutions to remain vigilant in their efforts to fully understand and comply with their obligations and best operational practices when providing and/or calculating data.”*

158. Barclays did not review its policies and procedures with regard to its EURIBOR submissions following receipt of the EBF’s letter. Barclays had no specific policies regarding its EURIBOR setting process prior to December 2009.
159. Since May 2010, Barclays has produced management information recording the rates it has submitted to the BBA for the calculation of US dollar, euro and sterling LIBOR, as well as the volume of actual transactions entered into daily for each tenor, the range of rates traded and the types of counterparties. However Barclays does not record similar information in respect of its EURIBOR submissions.
160. Barclays believed the submission of EURIBOR was a less significant risk than the submission of LIBOR.

*Conclusion on Barclays’ systems and controls*

161. Barclays had no (or inadequate) systems and controls that related specifically to its LIBOR or EURIBOR setting processes during the Relevant Period. There were several relevant opportunities for Barclays to review its systems and controls however Barclays did not carry out any review on these occasions.

**E. Involvement of Compliance**

162. This section (paragraphs 162 to 184) sets out the facts and matters relevant to the involvement of Compliance in several aspects of Barclays’ LIBOR submissions process:
  - i. conflicts of interest around Barclays’ LIBOR submissions process;
  - ii. issues raised in relation to Barclays’ approach to determining LIBOR submissions during the financial crisis in December 2007; and
  - iii. issues raised in relation to an instruction given to Barclays’ Submitters in October and November 2008.

*Conflicts of interest*

163. In September 2007 a senior manager at Barclays flagged the potential conflict of interest between Derivatives Traders’ risk positions and the activity of LIBOR submitting. The senior manager discussed the potential conflict of interest between the submissions process and the Derivatives Traders with Manager E and made it clear that Barclays’ Submitters should not be privy to the Derivatives Traders’ positions.
164. This occurred around the time Barclays’ submissions had received negative media comment for being higher than those of other contributing banks. A Submitter at Barclays was also receiving requests from Barclays’ US dollar Derivatives Traders

to make high LIBOR submissions around this time. For example in a telephone call on 12 September 2007, the Submitter indicated that Barclays' Derivatives Traders had an interest in high three month LIBOR submissions *"for about a couple of million dollars a basis point. Ah, but I don't know how much longer I'm gonna be able to keep it up at seventy seven"*.

165. On 12 September 2007, Manager E emailed Barclays' Compliance in relation to the LIBOR submissions process. This email raised questions about Barclays' obligations. *"I am [...] interested to understand what our legal obligations and exposures are to setting Libors each day when there are no trades in the market"*. He went on to refer to interest rate derivatives contracts, *"Although there are contracts that reset everyday, Monday is particularly important as all of the 3 month futures contracts fix"*.
166. Compliance agreed to draft a policy and some procedures which would ensure that Barclays' Submitters were not aware of the firm's overall exposure to LIBOR. After considering the issue further, Compliance concluded there was no risk of the Submitters becoming aware of the firm's overall exposure to LIBOR. Compliance considered at that time whether any information barriers between Barclays' Submitters and any other area of the bank were required.
167. Compliance concluded that no such information barriers were necessary, even though there was a potential conflict of interest between Barclays' Submitters and its Derivatives Traders. However, Compliance did not query the reference to derivatives contracts in Manager E's email on 12 September 2007. No questions were asked of Manager E or the Submitters in relation to this issue, no action was taken by Compliance and no systems and controls were put in place to deal with the potential conflict.
168. Barclays' Submitters continued to receive requests from Barclays' Derivatives Traders after this issue had been flagged to Compliance. For example, Trader B stated to a Submitter that *"We're all rooting for a high LIBOR tomorrow"* on 26 September 2007. The Submitter had been made aware by a senior manager that he should not know what the Derivatives Traders' positions were. The Submitter responded: *"I reckon you should be about four to five ticks higher"*.
169. Barclays' Submitters also continued to receive requests for EURIBOR submissions. It was not until 20 May 2009 that a euro Derivatives Trader's request was rebuffed. In response to a request from Trader H, a Submitter stated in an email *"Sorry I can't do that – compliance would have a real issue with that"*.
170. Barclays' Derivatives Traders continued to receive requests from external traders. For example, on 8 April 2011, a request for a high three month EURIBOR submission was made to Trader D at Barclays by an external trader. This was not escalated to Trader D's manager or to Compliance. Trader D responded positively to the external trader's request.

#### *Approach to LIBOR submissions during the financial crisis*

171. Submitters raised concerns about instructions to lower Barclays' submissions during the financial crisis. On 4 December 2007, a Submitter emailed Manager E, stating

that he was “*Feeling increasingly uncomfortable about the way in which USD libors are being set by the contributor banks, Barclays included*”. He went on to note that his one month submission was 5.30 but he was paying in the market at 5.40. “*Given a free hand I would have set at around 5.45% [...] one contributor was paying [x%] in the market at 11 am [and setting at y%]. This is not an uncommon phenomenon. The same kind of thing is happening in all the periods although 1 month is the most distorted. My worry is that we (both Barclays and the contributor bank panel) are being seen to be contributing patently false rates. We are therefore being dishonest by definition and are at risk of damaging our reputation in the market and with the regulators*”.

172. This issue was escalated to Compliance and senior management. It was agreed that Compliance would contact the FSA in relation to this issue. However, Compliance did not discuss the issue with the Submitter, who was concerned that Barclays’ LIBOR submissions were inappropriate and whose determinations were being overruled.
173. Compliance contacted the FSA on 6 December 2007 in relation to LIBOR submissions. Compliance relayed an unspecific concern about the levels at which other banks were setting US dollar LIBOR (at rates lower than Barclays’ submissions). Compliance did not inform the FSA that Barclays’ own submissions were incorrect or that the Submitter’s determination of where LIBOR should be set was being overruled. Compliance informed the FSA that Barclays’ submissions were within a reasonable range and could be justified, although there may be a difference of opinion as to where LIBOR should be set given the liquidity conditions at the time.
174. Compliance reported back to senior management on the same day that he had informed the FSA that “*we have consistently been the highest (or one of the two highest) rate provider in recent weeks, but we’re justifiably reluctant to go higher given our recent media experience*”. He also reported that the FSA “*agreed that the approach we’ve been adopting seems sensible in the circumstances, so I suggest we maintain status quo for now*”.
175. Submitters continued to be given instructions to reduce Barclays’ LIBOR submissions after Compliance had considered the issue.

#### *Compliance involvement in October/November 2008*

176. Concerns were again raised to Compliance in relation to an instruction to reduce LIBOR submissions given by senior management on 29 October 2008. This instruction was given following a telephone conversation between a senior individual at Barclays and the Bank of England during which the external perceptions of Barclays’ LIBOR submissions were discussed. No instruction for Barclays to lower its LIBOR submissions was given during this telephone conversation. However, as the substance of the telephone conversation was relayed down the chain of command at Barclays, a misunderstanding or miscommunication occurred. This meant that Barclays’ Submitters believed mistakenly that they were operating under an instruction from the Bank of England (as conveyed by senior management) to reduce Barclays’ LIBOR submissions.
177. A Submitter emailed Manager F and others on 29 October 2008 in relation to this

instruction, copying in Compliance. The Submitter recorded his intention to comply with the instruction. He went on to state that this would be “*breaking the BBA rules*” with regard to LIBOR setting and stated that “*the breaking of such rules will happen until the instruction demanded by senior management will be rescinded or the BBA rules are changed*”.

178. Compliance did not consider it was appropriate for Barclays’ Submitters to comply with the instruction. An individual in Compliance responded to the Submitter’s email on 3 November 2008 stating that he considered Barclays should continue to quote LIBOR “*where we see it – we obviously need to make sure we follow the BBA’s rules and avoid potential action by the FX and MM committee [of the BBA]. I’ve not been made aware of any suggestion by external sources that we should reduce rates to join the “pack”, but I’ll take that up with senior management this week*”.
179. Compliance did not speak to Barclays’ Submitters. Compliance did not ensure that the Submitters did not follow the instruction. The relevant individual in Compliance thought his email would suffice to “*nip it in the bud*”. In addition, Compliance did not discuss the issue with senior management. An individual in senior management went on to reiterate the instruction at a meeting with Barclays’ Submitters on 6 November 2008.
180. The instruction was taken into account by Barclays’ Submitters when determining submissions, notwithstanding the view expressed by Compliance. After 6 November 2008, changes in market conditions affected Barclays’ LIBOR submissions such that the instruction became redundant.
181. Relevant individuals in Compliance were aware of the US Commodity Futures Trading Commission (“CFTC”)’s investigation in connection with LIBOR at the time these concerns were raised with Compliance in October 2008. Barclays was also in communication with the FSA in relation to that investigation shortly thereafter. However, the FSA was not informed of this issue relating to Barclays’ LIBOR submissions until November 2009.

#### *Conclusion on Compliance failings*

182. In September 2007, senior management flagged the potential conflict of interest between Barclays’ Submitters and Derivatives Traders. This and other concerns were escalated to Compliance. Compliance did not discuss these issues with the Submitters and did not draft any policies or procedures relating to this conflict of interest. As a consequence, internal requests continued to be made to Barclays’ Submitters in 2008 and 2009 and a Derivatives Trader did not escalate to Compliance a request from an external trader in April 2011.
183. Barclays’ approach to determining its LIBOR submissions during the financial crisis was discussed with Compliance in December 2007. However Compliance did not discuss this issue with Barclays’ Submitters, one of whom had escalated that he considered Barclays’ approach to be inappropriate. Barclays continued to adopt the same approach to LIBOR submissions after Compliance became involved. Compliance contacted the FSA in relation to LIBOR submissions but did not convey the Submitter’s concerns or explain fully Barclays’ approach.

184. Concerns over an instruction given to Barclays' Submitters by senior management on 29 October 2008 were escalated to Compliance. Compliance did not consider it appropriate for the Submitters to follow the instruction. Compliance did not discuss this issue with the Submitters or with senior management. The Submitters went on to take the instruction into account and senior management went on to reiterate the instruction on 6 November 2008. Compliance did not inform the FSA of this instruction until November 2009.

## **FAILINGS**

185. The regulatory provisions relevant to this Warning Notice are referred to in Annex A.

### **Principle 5**

186. Principle 5 of the FSA's Principles for Businesses states that a firm must observe proper standards of market conduct.
187. The definitions of LIBOR and EURIBOR require submissions from contributing banks based on their subjective judgement of borrowing or lending in the interbank market. The definitions do not allow for consideration of derivatives traders' positions or of concerns over the negative media perception of high LIBOR submissions.
188. Barclays breached Principle 5 on numerous occasions between January 2005 and July 2008 by making US dollar LIBOR and EURIBOR submissions which took into account requests made by its Derivatives Traders. This included requests made on behalf of derivatives traders at other banks. The Derivatives Traders were motivated by profit and sought to benefit Barclays' trading positions. The requests were made openly and in some cases Barclays' trading desk managers received or participated in inappropriate communications.
189. It was inappropriate for Barclays to make US dollar LIBOR and EURIBOR submissions which took its Derivatives Traders' positions (or the positions of traders at other banks) into account. Barclays did not therefore observe proper standards of market conduct when making US dollar LIBOR and EURIBOR submissions.
190. Barclays also breached Principle 5 on numerous occasions between February 2006 and October 2007 by seeking to influence the EURIBOR (and to a much lesser extent the US dollar LIBOR) submissions of other banks contributing to the rate setting process.
191. Where Barclays made submissions which took into account the positions of its own Derivatives Traders there was a risk that the published US dollar LIBOR and EURIBOR rates would be manipulated. This risk was unacceptable, in particular given the significance of LIBOR and EURIBOR rates to UK and international financial markets. Barclays could have benefitted from this misconduct to the detriment of other market participants. Where Barclays acted in concert with other banks, the method of calculation of EURIBOR and LIBOR meant that the risk of manipulation increased materially.

192. Barclays also acted inappropriately and breached Principle 5 between September 2007 and May 2009 by making LIBOR submissions which took into account concerns over the negative media perception of Barclays' LIBOR submissions.

### **Principle 3**

193. Principle 3 of the FSA's Principles for Businesses states that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
194. Barclays breached Principle 3 throughout the Relevant Period by failing to have adequate risk management systems or effective controls in place in relation to its LIBOR and EURIBOR submissions processes. The extent of Barclays' misconduct throughout the Relevant Period was exacerbated by these inadequate systems and controls.
195. The importance of benchmark reference rates such as LIBOR and EURIBOR to the financial markets should have been obvious to Barclays. Barclays should have ensured that the systems and controls around its submissions processes were adequate. In addition, it would have been appropriate for Barclays to review whether its systems and controls were adequate when the EBF highlighted the obligations of EURIBOR contributing banks in 2007, during the course of the BBA's review of LIBOR in 2008 and when guidelines were circulated and finalised by the BBA in 2008 and 2009. Barclays failed to do so.

### **Principle 2**

196. Principle 2 of the FSA's Principles for Businesses states that a firm must conduct its business with due skill, care and diligence.
197. Barclays failed to conduct its business with due skill, care and diligence when considering issues raised internally in relation to its LIBOR submissions. This was a very serious breach by Barclays of Principle 2. LIBOR issues were escalated to Compliance on three occasions during the Relevant Period. In each case Compliance failed to assess and address the issues effectively.
198. Compliance should have followed up on concerns being raised on these occasions. Compliance should have produced a policy in response to the concern relating to the conflict of interest between Submitters and Derivatives Traders which had been flagged as an issue by senior management in September 2007.
199. Compliance should have questioned Barclays' Submitters in relation to concerns raised about Barclays' approach to LIBOR submitting during the financial crisis and provided guidance to the Submitters on the appropriate approach. Compliance should have reported the issues fully to the FSA.
200. Compliance's failures meant that other issues at Barclays relating to the LIBOR and EURIBOR submissions process were allowed to continue. For example, internal and external communications relating to Derivatives Traders' requests continued after the potential conflict of interest between Submitters and Derivatives Traders had been flagged. Barclays' approach to making submissions during the financial

crisis remained unchanged even after Compliance's involvement in December 2007 and November 2008. Barclays' breaches of Principle 5 and Principle 3 continued despite Compliance's involvement on these occasions.

201. Compliance's failures also led to unclear and insufficient communication about issues to the FSA. Compliance should have informed the FSA fully of its approach to LIBOR submissions during the financial crisis when it became aware of this issue in 2007. Compliance should have notified the FSA of the instruction given on 29 October 2008 prior to November 2009, in particular because Compliance was in communication with the FSA about the CFTC's investigation soon after the instruction was given.

## **SANCTION**

202. The regulatory provisions that the FSA has applied in determining an appropriate and proportionate financial penalty are referred to in Annex A.
203. Barclays' misconduct encompassed a number of issues involving a significant number of employees and occurring over a number of years. In relation to Barclays' breaches of Principle 5, the FSA has had particular regard to the routine nature of the Derivatives Traders' requests and of instructions to Submitters to reduce Barclays' LIBOR submissions during the financial crisis.
204. The FSA considers there are mitigating factors in relation to Barclays' conduct during the financial crisis. In particular, the conditions in the money market at that time meant the frequency and average size of transactions which could be considered by Barclays' Submitters when determining submissions were very limited. In addition, Barclays raised concerns about other banks and did make comments about Barclays' own approach to submitting LIBOR to external entities including the FSA (in the course of routine liquidity calls), however the comments made to the FSA did not reflect fully Barclays' conduct.
205. In relation to Barclays' breach of Principle 3, the FSA considers there are aggravating factors relevant to penalty. In particular, the breach continued over a number of years including after issues had been highlighted by the BBA and EBF. Barclays did however improve its systems and controls by the end of the Relevant Period and continued to make enhancements thereafter.
206. Barclays' breaches of Principles 5 and 3 could have been identified and remedied during the Relevant Period on several occasions on which Compliance became involved in relevant issues. Barclays' Principle 2 breach however resulted in those issues continuing. Barclays' misconduct also resulted in issues not being reported to the FSA or on occasion not being reported fully during the Relevant Period.
207. These issues are of the utmost seriousness owing to the prevalence of LIBOR and EURIBOR as benchmark reference rates in a number of relevant markets including markets in OTC derivatives contracts and futures contracts traded on exchanges such as LIFFE in London. LIBOR and EURIBOR also have a wider impact on other markets. Barclays' misconduct could have caused serious harm to participants in any of these markets. Harm could have been caused by Barclays' misconduct if the



final reference rates were affected by Barclays' actions on any given day. Barclays' misconduct also created the risk that the integrity of LIBOR and EURIBOR would be called into question and that confidence in or the stability of the UK financial system would be threatened.

208. The FSA has also considered the nature and extent of the co-operation provided by Barclays during the course of its investigation. The FSA acknowledges that Barclays has provided extremely good co-operation, in particular in providing access to evidence and facilitating voluntary witness interviews which were conducted by the FSA together with overseas authorities. The FSA's investigation would have taken much longer to conclude without Barclays' co-operative approach.

## **PROCEDURAL MATTERS**

### **Decision maker**

209. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
210. This Final Notice is given under, and in accordance with, section 390 of the Act.

### **Manner of and time for Payment**

211. The financial penalty must be paid in full by Barclays to the FSA by no later than 11 July 2012, 14 days from the date of the Final Notice.

### **If the financial penalty is not paid**

212. If all or any of the financial penalty is outstanding on 12 July 2012, the FSA may recover the outstanding amount as a debt owed by Barclays and due to the FSA.

### **Publicity**

213. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to Barclays or prejudicial to the interests of consumers.
214. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**FSA contacts**

215. For more information concerning this matter generally, Barclays should contact Tepo Din (direct line: 020 7066 6834) or Joanna Howard (direct line: 020 7066 3528) at the FSA.

William Amos

FSA Enforcement and Financial Crime Division

## ANNEX A

### RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

#### 1. STATUTORY PROVISIONS

1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, are market confidence, financial stability, consumer protection and the reduction of financial crime.

1.2. Section 206 of the Act provides:

*“If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate”.*

1.3. Barclays is an authorised person for the purposes of section 206 of the Act. The requirements imposed on authorised persons include those set out in the FSA's rules made under section 138 of the Act.

#### 2. REGULATORY PROVISIONS

2.1. In exercising its power to issue a financial penalty, the FSA must have regard to the relevant provisions in the FSA Handbook of rules and guidance (the FSA Handbook).

2.2. In deciding on the action proposed, the FSA has also had regard to guidance published in the FSA Handbook and set out in the Regulatory Guides, in particular the Decision Procedure and Penalties Manual (DEPP).

##### **Principles for Businesses (PRIN)**

2.3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the FSA's Handbook. They derive their authority from the FSA's rule-making powers as set out in the Act and reflect the FSA's regulatory objectives. The relevant Principles are as follows:

2.4. Principle 2 provides:

*“A firm must conduct its business with due skill, care and diligence”.*

2.5. Principle 3 provides:

*“A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems”.*

2.6. Principle 5 provides:

*“A firm must observe proper standards of market conduct”.*

## **Decision Procedure and Penalties Manual (DEPP)**

- 2.7. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP. Changes to DEPP were introduced on 6 March 2010. Given that the majority of the misconduct occurred prior to that date, the FSA has had regard to the provisions of DEPP in force prior to that date.
- 2.8. DEPP 6.1.2 provides that the principal purpose of imposing a financial penalty is to “*promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour*”.
- 2.9. DEPP 6.5.2 sets out some of the factors that may be taken into account when the FSA determines the level of a financial penalty that is appropriate and proportionate to the misconduct as follows:
- (1) deterrence;
  - (2) the nature, seriousness and impact of the breach in question;
  - (3) the extent to which the breach was deliberate and reckless;
  - (4) whether the person on who the penalty is to be imposed is an individual;
  - (5) the size, financial resources and other circumstances of the person on whom the penalty is to be imposed;
  - (6) the amount of benefit gained or loss avoided;
  - (7) difficulty of detecting the breach;
  - (8) conduct following the breach;
  - (9) disciplinary record and compliance history;
  - (10) other action taken by the FSA;
  - (11) action taken by other domestic or international regulatory authorities;
  - (12) FSA guidance or other published materials; and
  - (13) the timing of any agreement as to the amount of the penalty.
- 2.10. The FSA has also had regard to the provisions of the Enforcement manual (ENF) in force prior to 28 August 2007, in relation to misconduct which occurred prior to that date.