Financial Services Authority

FINAL NOTICE

To: Barclays Capital Securities Limited and Barclays Bank plc

Of: 5 The North Colonnade, London E14 4BB

Dated 19 August 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about a requirement to pay a financial penalty.

1. THE PENALTY

1.1. The FSA gave Barclays Capital Securities Limited and Barclays Capital Division of Barclays Bank plc (collectively "Barclays") a Decision Notice dated 7 August 2009 which notified them that pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £2.45 million on Barclays in respect of breaches of SUP 17 of the FSA Handbook and breaches of Principles 2 and 3 of the FSA's Principles for Businesses which occurred between 1 October 2006 and 31 October 2008 ("the Relevant Period").

1.2. Barclays has confirmed that it will not be referring the matter to the Financial Services and Markets Tribunal.

1.3. Accordingly, for the reasons set out below and having agreed with Barclays the facts and matters relied on, the FSA imposes a financial penalty on Barclays in the amount of £2.45 million.

1.4. Barclays agreed to settle at an early stage of the FSA investigation. They therefore qualified for a Stage 1 discount under the FSA's executive settlement procedures.

2. REASONS FOR THE ACTION

Summary

2.1. Accurate and complete transaction reporting is essential to enable the FSA to meet its statutory objectives of maintaining market confidence and reducing financial crime. The primary function for which the FSA uses transaction reports is to detect and investigate suspected market abuse, insider trading and market manipulation.

2.2. A transaction report is a data set submitted to the FSA and relates to an individual financial market transaction which includes details of the product traded, the firm that undertook the trade, the trade counterparty and the trade characteristics such as buy/sell identifier, price and quantity.

2.3. In the Relevant Period Barclays breached the following:

2.3.1. SUP 17 in that it failed to submit accurate transaction reports as required in respect of an estimated 57.5 million transactions;

2.3.2. Principle 3 by failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, to meet the requirements to submit accurate transaction reports to the FSA; and

2.3.3. Principle 2 by failing to conduct its business with due skill, care and diligence in failing to respond sufficiently to opportunities to review the adequacy of its transaction reporting systems.

2.4. The FSA considers these failings to be particularly serious because:

(a) Barclays' failure to submit accurate transaction reports could have a serious impact on the FSA's ability to detect and investigate suspected market abuse and consequently could impact the FSA's ability to maintain market confidence and reduce financial crime;

(b) The inaccurate reporting impacted a high volume of transactions across all asset classes;

(c) There were serious weaknesses in Barclays' systems and controls around transaction reporting and Barclays failed to respond adequately to the findings of a compliance review in relation to transaction reporting conducted in 2006; and

(d) Barclays' failures occurred during a period of heightened awareness around transaction reporting issues as a result of the implementation of the

Markets in Financial Instruments Directive ("MiFID") and public statements by the FSA.

2.5. Barclays has taken a number of steps which serve to mitigate the seriousness of the failings. These include:

(a) Immediately commissioning an extensive review of the transaction reporting process once the FSA brought errors in its transaction reporting to its attention;

(b) Committing extensive resources, including engaging external consultants, to carry out a detailed review and implement a comprehensive remediation programme;

(c) Establishing an Operations Regulatory Team to oversee remediation and improvement of standards and processes around transaction reporting;

(d) Initiating an intensive training programme for staff; and

(e) Co-operating fully with the FSA in the course of its investigation.

Relevant regulatory provisions

2.6. The FSA is authorised pursuant to section 206 of the Act, if it considers that an authorised person has contravened a requirement imposed on him by or under the Act, to impose on him a penalty in respect of the contravention, of such amount as it considers appropriate.

2.7. Market confidence and the reduction of financial crime are statutory objectives for the FSA under Section 2(2) of the Act.

2.8. The transactions which are required to be reported to the FSA are defined in SUP 17.1.4R which states:

"A firm *which executes a* transaction*:*

(1) *in any* financial instrument *admitted to trading on a* regulated market *or a* prescribed market *(whether or not the* transaction *was carried out on such a market); or*

(2) *in any* OTC derivative *the value of which is derived from, or which is otherwise dependent upon, an equity or debt-related* financial instrument *which is* admitted to trading *on a* regulated market *or on a* prescribed market*;*

must report the details of the transaction *to the* FSA."

2.9. The time period for making reports is stipulated in SUP 17.2.7R:

"*A* firm *must report the required details of the* transaction *to the* FSA *as quickly as possible and by not later than the close of the working day following the day upon which that* transaction *took place*."

2.10. SUP 17.4.1EU provides:

"Reports of transactions *…shall contain the information specified in SUP 17 Annex 1 EU which is relevant to the type of financial instrument in question and which the* FSA *declares is not already in its possession or is not available to it by other means."*

2.11. SUP 17.4.2R provides:

"The reports referred to in SUP 17.4.1 … shall, in particular include details of the names and the numbers of the instruments bought or sold, the quantity, the dates and times of execution and the transaction *prices and means of identifying the* firms *concerned."*

2.12. Annex 1 to SUP 17 provides lists of fields and mandatory information to be provided as the minimum content of a transaction report.

2.13. The FSA's Principles for Businesses ("the Principles") are requirements imposed under section 138 of the Act. They represent a general statement of the fundamental obligations of firms under the regulatory system.

2.14. Principle 2 of the Principles states that:

"A firm must conduct its business with due skill, care and diligence."

2.15. Principle 3 of the Principles states that:

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

2.16. The FSA's approach to exercising its enforcement powers is set out in the Decision Procedure & Penalties Manual ("DEPP") and Enforcement Guide ("EG"). As this matter relates to events prior to the introduction of EG and DEPP (28 August 2007), the FSA has also had regard to the previous relevant policies set out in the Enforcement Manual.

Facts and matters relied upon

Background

2.17. SUP 17 requires transaction reports containing mandatory details to be submitted to the FSA by the end of the next business day following the day on which the firm entered into the transaction. At the end of each working day transaction reports received by firms are loaded onto the FSA's transaction monitoring system.

2.18. Firms are able to report transactions to the FSA using one or more Approved Reporting Mechanisms ("ARMs"), which are specialised systems approved by the FSA for the purpose of transaction reporting.

2.19. The implementation of MiFID on 1 November 2007 introduced changes to the list of products in which transactions have to be reported and standardisation of the list of fields which need to be included in the reports. SUP 17 was amended from 1 November 2007 to reflect these changes. Whilst the changes required to be implemented by firms in order to give effect to transaction reporting required by MiFID were significant, the mandatory content of the transaction reports for many products remained largely unaffected by the changes under MiFID.

2.20. The FSA has provided information to firms in Market Watch on transaction reporting issues. In order to assist firms with transaction reporting generally and with respect to changes introduced by MiFID, the FSA issued a Transaction Reporting User Pack (TRUP) in July 2007.

2.21. Statements were made by the FSA in Market Watch in March 2007, July 2007 and June 2008 (Issues 19 and 28) and TRUP that firms should regularly review the integrity of transaction report data.

2.22. Issue 28 of the Market Watch in June 2008 stated "*we expect firms now to be fully compliant with the transaction reporting requirements set out in SUP 17. Where we identify problems with transaction reporting we will consider the use of our enforcement tools.*"

<u>Barclays' internal review</u>

2.23. In early October 2008 the FSA noted discrepancies in Barclays' transaction reports whilst conducting a review of trading due to an incident of suspected market abuse by a third party. Barclays agreed to investigate the discrepancies identified by the FSA and to conduct a wider review of its transaction reporting across all relevant asset classes ("the 2008 review"). The 2008 review focussed on the period 1 November 2007 to 31 October 2008 ("the Review Period").

2.24. The 2008 review revealed that during the Review Period Barclays' errors in transaction reporting impacted 100% of Barclays' reportable transactions across every core reportable asset class except cash equities where approximately 84% of reportable transactions were impacted. It is estimated that a total 57.5 million reportable transactions were either reported inaccurately, with incomplete data, or not reported at all.

2.25. Barclays reported that the last internal review of transaction reporting had taken place in September 2006 ("the 2006 review"). The 2006 review had highlighted a total of fourteen findings of failure to meet the requirements of SUP 17 (eleven were at the time of the 2006 review categorised by Barclays as high risk, one as critical risk and two as medium risk). Barclays had notified the FSA of some of the findings of the 2006 review and agreed a deadline of 9 October 2006 to remediate the issues.

2.26. Barclays took steps to address the findings of the 2006 review, however Barclays did not schedule a follow-up review or request further samples from the FSA to review the integrity of submitted data. Barclays did not take any steps to initiate a wider review of its systems and controls around transaction reporting in response to the findings of the 2006 review

2.27. The 2008 review found that action items for five of the findings identified by Barclays as high risk in the 2006 review had not been adequately implemented and/or maintained and therefore contributed to recurrent errors in transaction reports submitted to the FSA. This included failure to implement the recommendation to establish a process for verifying and validating transaction reports and clearly define ownership of, and responsibility for, this process.

Breaches of SUP 17

2.28. The errors identified affected eight different systems used by Barclays to report transactions to the FSA. The errors occurred across all Barclays' core reportable asset classes.

2.29. The following are examples of the most serious errors identified which amount to breaches of SUP 17 during the Review Period (further details on these examples are set out at Appendix 1):

(a) Failure to submit a report at all for 17 million transactions;

(b) Failure accurately to report the required fields for 5.8 million cash equity transactions as a result of reporting transactions in batches;

(c) Incorrect trade time reported for 24.6 million transactions;

(d) Incorrect code to identify the relevant counterparty and/or client for whom Barclays had acted in relation to 7 million transactions;

(e) Failure to identify the underlying instrument for 2.2 million transactions; and

(f) Failure to identify whether the transaction was a buy or sell from the perspective of Barclays in relation to 3.8 million transactions.

Breach of Principle 3

2.30. The following matters demonstrate that during the Relevant Period there were extensive failings in the design, implementation, operation and management of systems and controls over transaction reporting and thus amount to a breach of Principle 3:

(a) Whilst it was understood that the responsibility for transaction reporting lay with Operations, with guidance provided by Compliance on the applicable requirements, there was a failure to have a sufficiently clear allocation of responsibility for transaction reporting;

(b) Inadequate procedures for the provision of management information to enable proper oversight of the transaction reporting process;

(c) Inadequate processes for ensuring continued transaction reporting accuracy and completeness post any system or process change;

(d) Training carried out for staff in respect of transaction reporting following the 2006 review was not adequate;

(e) Failure to carry out sample testing of the accuracy of transaction reports submitted following the 2006 review. This was despite repeated statements by the FSA in Market Watch and TRUP that firms should regularly review the integrity of transaction report data.

Breach of Principle 2

2.31. The following matters demonstrate a failure by Barclays to conduct its business with due skill, care and diligence and thus amount to a breach of Principle 2:

(a) The failure to respond adequately to the findings of the 2006 review despite the classification of a number of findings as high risk by Barclays Compliance. A number of the transaction reporting deficiencies identified in the 2006 review had not been addressed adequately as at October 2008 and were the cause of ongoing inaccurate transaction reporting; and

(b) The failure to initiate a review of the processes around transaction reporting and/ or accuracy of the data submitted to the FSA following the 2006 review and/ or changes introduced by MiFID on 1 November 2007. The FSA provided information to firms to assist with the transition to MiFID as well as more general information to assist firms to comply with SUP 17. In Issue 28 of Market Watch (June 2008), the FSA stated "*we expect firms now to be fully compliant with the transaction reporting requirements set out in SUP 17. Where we identify problems with transaction reporting we will consider the use of our enforcement tools.*" Barclays failed to take adequate steps, however, to initiate a review of its processes or the integrity of transaction report data.

3. SANCTION

3.1. The FSA's policy on the imposition of financial penalties and public censures is set out in DEPP and EG. In determining the financial penalty proposed, the FSA has had regard to this guidance. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefit of compliant behaviour.

3.2. The FSA considers that the seriousness of this matter merits the imposition of a significant financial penalty.

3.3. The FSA has had regard to the following factors:

(a) Barclays' failure to submit accurate transaction reports could have a serious impact on the FSA's ability to detect and investigate suspected market abuse and could consequently impact the FSA's ability to maintain market confidence and reduce financial crime;

(b) 57.5 million reportable transactions were affected by the inaccurate reporting;

(c) The inaccurate reporting related to transactions across all asset classes;

(d) The errors occurred across eight different systems used by Barclays to report to the FSA;

(e) There were serious weaknesses in Barclays' systems and controls around transaction reporting;

(f) Whilst Barclays took steps to address the errors in transaction reporting which had been identified in the 2006 review, those steps were not adequately implemented and/or maintained;

(g) Barclays failed to initiate a review of its processes around transaction reporting after:

   (i) the findings of the 2006 review;

   (ii) implementation of MiFID, despite heightened awareness around transaction reporting issues; and

   (iii) the FSA's statement in June 2008 in Market Watch that firms were expected to be fully compliant with the requirements in SUP 17; and

(h) Barclays failed to conduct sample testing of the integrity of its data after the 2006 review despite the FSA's encouragement in Market Watch and TRUP to do so.

3.4. The FSA has also had regard to the following mitigating features:

(a) Barclays immediately commissioned an extensive review of the transaction reporting processes once the FSA brought the errors to its attention and engaged external consultants to provide quality assurance in relation to that review;

(b) Extensive resources have been committed in order to carry out a detailed review and implement a comprehensive remediation programme;

(c) Barclays has kept the FSA informed of developments and has co-operated fully throughout the FSA's investigation. Barclays has worked with the FSA to facilitate an early settlement;

(d) Barclays has now established an Operations Regulatory Team to oversee the remediation programme, establish ongoing quality assurance, improve the quality of management information and improve standards when operational and technical changes are introduced for transaction reporting. Significant enhancements have been made in all of these areas; and

(e) Barclays has initiated an intensive training programme in relation to transaction reporting and will be providing ongoing training to staff to increase awareness of transaction reporting obligations and the need to ensure transaction reports meet the requirements of SUP 17.

4. CONCLUSIONS

4.1. The FSA has decided in all the circumstances that the seriousness of the breaches merits a substantial financial penalty. In determining the financial penalty the FSA has considered the need to deter Barclays and other firms from committing similar breaches. The FSA has also had regard to penalties in other similar cases.

4.2. The FSA has decided to impose a financial penalty of £2.45 million. This takes into account the applicable Stage 1 discount for early settlement.

5. DECISION MAKERS

5.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

6. IMPORTANT

6.1. This Final Notice is given to Barclays in accordance with section 390 of the Act. The following statutory rights are important.

Manner of and time for Payment

6.2. The financial penalty must be paid in full by Barclays to the FSA by no later than 2 September 2009, 14 days from the date of the Final Notice.

If the financial penalty is not paid

6.3. If all or any of the financial penalty is outstanding on 3 September 2009, the FSA may recover the outstanding amount as a debt owed by Barclays and due to the FSA.

Publicity

6.4. 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 you or prejudicial to the interests of consumers.

6.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

6.6. For more information concerning this matter generally, you should contact Helena Varney (020 7066 1294) or Roshnee Shah (020 7066 1430) of the Enforcement Division of the FSA.

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Jamie Symington

Head of Department

FSA Enforcement Division

APPENDIX 1

EXAMPLES OF BARCLAYS' BREACHES OF SUP 17

1. Failure to submit a report at all:

Asset Class	**ARM**	**Summary Details**	**Volume**	**Proportion**[1]
Cash Equities	T2	System used failed to identify proprietary London Stock Exchange equity transactions as reportable	16.6 million	38%
OTC Derivatives	TRAX, T2	System used failed to identify transactions between Barclays entities as reportable	320,000	20%
Bonds	TRS	Barclays Capital Incorporated leg of an agency transaction not reported due to error in system reporting logic	59,000	42%
Bonds	TRS	Classifying new trades as updates which resulted in a rejection of the report as the original transaction (which did not exist) could not be found	67,000	48%

2. Failure to report accurate and required fields of all individual transactions as a result of reporting transactions in batches:

Asset Class	**ARM**	**Summary Details**	**Volume**	**Proportion**
Cash equities	TRAX 2	Reporting trades in batches with an average price of transactions instead of price of each transaction. Time of allocation reported instead of time of execution of each transaction	5.8 million	66%

3. Failure to report the correct trading time which should be the time the transaction was executed and reported in London local time[2]:

Asset Class	**ARM**	**Summary Details**	**Volume**	**Proportion**
Cash Equities	T2	System failed to make adjustment during British Summer Time	19.6 million	44%

[1] This refers to the proportion of all reportable transactions within the relevant asset class and ARM
[2] SUP 17 Annex 1, Field Identifier 3

Bonds	TRAX 2	System for reporting US Treasury transactions made no adjustment to local London time	193,000	100%
CFD	TRAX 2	Time transactions booked provided instead of time of execution	3 million	100%
CDS	SDAPS	System failed to make adjustment during British Summer Time. Time transactions booked provided instead of time of execution	1.1 million	97%
Futures	TRS	Time of trade field incorrectly populated to reflect European time zone instead of London local time	763,000	11%

4. Failure to provide the appropriate code to identify the relevant counterparty to transactions and/ or client Barclays had acted for. The code to be used is the FSA reference number ("FRN") or Swift Bank Identifier Code ("BIC") and if neither of these exist a unique internal code[3]:

Asset Class	**ARM**	**Summary Details**	**Volume**	**Proportion**
Futures	TRS	Executing broker details provided instead of the counterparty to the transaction	7 million	100%

5. Failure to identify the underlying instrument.[4]

Asset Class	**ARM**	**Summary Details**	**Volume**	**Proportion**
OTC Derivatives	TRAX, T2	Unclear descriptions of the underlying instrument	1.2 million	80%
CDS	SDAPS	Failure to provide the ISIN to identify the underlying debt instrument	1 million	89%

[3] SUP 17, Annex 1, Field Identifier 20 and 24
[4] SUP 17, Annex 1, field identifier 8.

6. Failure to identify whether the transaction was a buy or sell from the perspective of Barclays[5]:

Asset Class	ARM	Summary Details	Volume	Proportion
Cash equities	T2	Incorrect buy/sell indicator for client side reports	3.8 million	9%

7. Failure to correctly populate the price field with respect to CDS transactions:

Asset Class	ARM	Summary Details	Volume	Proportion
CDS	SDAPS	Incorrect population of price field	1.1 million	97%

[5] SUP 17, Annex 1, Field Identifier 4