

## **APPENDIX A**

### **STATEMENT OF FACTS**

This Statement of Facts is incorporated by reference as part of the non-prosecution agreement, dated June 26, 2012, between the United States Department of Justice, Criminal Division, Fraud Section, and Barclays Bank PLC. The parties agree that the following information is true and accurate:

#### **BACKGROUND**

##### *LIBOR and EURIBOR*

1. Since its inception in approximately 1986, the London Interbank Offered Rate (“LIBOR”) has been a benchmark interest rate used in financial markets around the world. Futures, options, swaps, and other derivative financial instruments traded in the over-the-counter market and on exchanges worldwide are settled based on LIBOR. The Bank of International Settlements has estimated that in the second half of 2009, the notional amount of over-the-counter interest rate derivatives contracts was valued at approximately \$450 trillion. In addition, mortgages, credit cards, student loans, and other consumer lending products often use LIBOR as a reference rate.

2. LIBOR is published under the auspices of the British Bankers’ Association (“BBA”), a trade association with over 200 member banks that addresses issues involving the United Kingdom banking and financial services industries. The BBA defines LIBOR as:

The rate at which an individual Contributor Panel bank could borrow funds, were it to do so by asking for and then accepting inter-bank offers in reasonable market size, just prior to 11:00 [a.m.] London time.

This definition has been in place since approximately 1998.

3. LIBOR is calculated for ten currencies. The LIBOR for a given currency is the result

of a calculation based upon submissions from a panel of banks for that currency (the “Contributor Panel”) selected by the BBA. Each member of the Contributor Panel submits its rates every London business day through electronic means to Thomson Reuters, as an agent for the BBA, by 11:10 a.m. London Time. Once each Contributor Panel bank has submitted its rate, the contributed rates are ranked. The highest and lowest quartiles are excluded from the calculation, and the middle two quartiles (i.e., 50% of the submissions) are averaged to formulate the resulting LIBOR “fix” or “setting” for that particular currency and maturity.

4. The LIBOR contribution of each Contributor Panel bank is submitted to between two and five decimal places, and the LIBOR fix is rounded, if necessary, to five decimal places. In the context of measuring interest rates, one “basis point” is one-hundredth of one percent (0.01%).

5. Thomson Reuters calculates and publishes the rates each business day by approximately 11:30 a.m. London Time. Fifteen maturities (or “tenors”) are quoted for each currency, ranging from overnight to twelve months. The published rates are made available worldwide by Thomson Reuters and other data vendors through electronic means and through a variety of information sources. In addition to the LIBOR fix resulting from the calculation, Thomson Reuters publishes each Contributor Panel bank’s submitted rates along with the names of the banks.

6. According to the BBA, from at least 2005 to the present, each Contributor Panel bank must submit its rate without reference to rates contributed by other Contributor Panel banks. The basis for a Contributor Panel bank’s submission, according to the BBA, must be the rate at which members of the bank’s staff primarily responsible for management of a bank’s cash, rather than a

bank's derivative trading book, consider that the bank can borrow unsecured interbank funds in the London money market. Further according to the BBA, a Contributor Panel bank may not contribute a rate based on the pricing of any derivative financial instrument. In other words, a Contributor Panel bank's LIBOR submissions should not be influenced by its motive to maximize profit or minimize losses in derivative transactions tied to LIBOR.

7. The Contributor Panel for United States Dollar ("Dollar") LIBOR from at least 2005 through 2010 comprised 16 banks, including Barclays. Presently, there are 18 banks on the Dollar Contributor Panel, including Barclays. From at least 2005 through the present, Barclays has also been a member of the Contributor Panels for, among other currencies, Yen LIBOR and Sterling LIBOR.

8. From at least 2005 to the present, Barclays has also been a member of the Contributor Panel for the Euro Interbank Offered Rate ("EURIBOR"). EURIBOR is a reference rate overseen by the European Banking Federation ("EBF"), which is based in Brussels, Belgium. Since 2005, the EURIBOR Contributor Panel has comprised approximately 42 to 48 banks. EURIBOR is the rate at which Euro interbank term deposits within the Euro zone are offered by one prime bank to another, at 11:00 a.m. Brussels time. Thomson Reuters, as an agent of the EBF, calculates and publishes the rates each business day. Each EURIBOR Contributor Panel bank submits its contributed rate to Thomson Reuters through electronic means, and then the contributed rates are ranked. The highest and lowest 15% of all the quotes are excluded from the calculation, and the remaining rates (i.e., the middle 70%) are averaged to formulate the resulting EURIBOR fix for each tenor. The published rates, and each Contributor Panel bank's submitted rates, are made available worldwide through electronic means and through a variety of

information sources.

### *Eurodollar Futures Contracts*

9. Eurodollar futures contracts traded on the Chicago Mercantile Exchange (“CME”) are settled based on LIBOR. Eurodollar futures contracts are highly liquid, and each has a notional value of \$1 million. A “Eurodollar” is a Dollar deposit with a bank outside of the United States. A Eurodollar futures contract is essentially the interest that would be paid on a Eurodollar deposit of \$1 million for a term of three months. Prior to the settlement date, the price of a 3-month Eurodollar futures contract is an indication of the market’s prediction of the 3-month Dollar LIBOR on its settlement date. The actual settlement price of a 3-month contract is calculated as 100 minus the 3-month Dollar LIBOR on the settlement date. Most Eurodollar futures contracts settle on four quarterly International Money Market (“IMM”) dates, which are the third Wednesday of March, June, September, and December. The last trading days are the second London bank business day prior to the third Wednesday (i.e., usually Monday) in those months. In 2009, according to the Futures Industry Association, more than 437 million Eurodollar futures contracts were traded on the CME.

### *Barclays*

10. Barclays Bank PLC is a financial services corporation with headquarters located in London, England. Barclays Bank PLC has banking subsidiaries around the world, including in the United States, and Barclays Bank PLC has a branch in New York. Barclays Capital Inc. is a wholly-owned subsidiary of Barclays Bank PLC that engages in investment banking, wealth management, and investment management services. (Collectively, Barclays Bank PLC and Barclays Capital Inc. are referred to as “Barclays”). Barclays employs derivatives traders in

New York, New York and in London, England who trade financial instruments tied to LIBOR and EURIBOR, including interest rate swaps and Eurodollar futures contracts (“swaps traders”). Barclays employees on its money markets desk in London have been responsible for contributing Barclays’s Dollar, Sterling, and Yen LIBOR and its EURIBOR submissions (“submitters”).

## **BARCLAYS’S MANIPULATION OF ITS LIBOR AND EURIBOR SUBMISSIONS**

### **Swaps Traders’ Requests for Favorable Settings**

#### *Swaps Traders’ Requests Within Barclays*

11. From approximately 2005 through 2007, and occasionally thereafter through approximately 2009, certain Barclays swaps traders requested that certain Barclays LIBOR and EURIBOR submitters submit LIBOR and EURIBOR contributions that would benefit the traders’ trading positions, rather than rates that complied with the definitions of LIBOR and EURIBOR. Those swaps traders either proposed a particular LIBOR or EURIBOR contribution for a particular tenor and currency, or proposed that the rate submitter contribute a rate higher, lower, or unchanged for a particular tenor and currency. The swaps traders made these requests via electronic messages, telephone conversations, and in-person conversations. The LIBOR and EURIBOR submitters agreed to accommodate, and accommodated, the swaps traders’ requests for favorable LIBOR and EURIBOR submissions on numerous occasions.

12. From at least as early as June 2005 through approximately September 2007, in New York, New York and in London, England, several Barclays Dollar swaps traders made frequent requests for favorable Dollar LIBOR contributions to the Barclays Dollar LIBOR submitters on the London money markets desk. From approximately September 2007 through approximately May 2009, such requests were made occasionally. Barclays Dollar LIBOR submitters

accommodated the requests on numerous occasions and submitted Barclays's Dollar LIBOR contributions consistent with the requests.

13. For example, on Friday, March 10, 2006, a Barclays Dollar swaps trader located in London ("Trader-1") sent an e-mail to a Barclays Dollar LIBOR submitter ("Submitter-1") stating: "Hi mate[.] We have an unbelievably large set on Monday (the IMM). We need a really low 3m [3-month] fix, it could potentially cost a fortune. Would really appreciate any help, I'm being told by my NYK [counterparts in New York] that it's extremely important. Thanks." Then, on Monday, March 13, 2006, at approximately 7:48 a.m., Trader-1 wrote to Submitter-1: "The big day has[] arrived...My NYK were screaming at me about an unchanged 3m libor. As always, any help wd [would] be greatly appreciated. What do you think you'll go for 3m?" Submitter-1 responded, "I am going 90 altho[ugh] 91 is what I should be posting." Trader-1 replied in part: "I agree with you and totally understand. Remember, when I retire and write a book about this business your name will be in golden letters...." Submitter-1 replied, "I would prefer this not be in any books!" Barclays's 3-month Dollar LIBOR submission on March 13, 2006 was 4.90%, which was a rate unchanged from the previous trading day and was tied for the lowest rate submitted.

14. As another example, on February 22, 2006, at approximately 9:42 a.m., Trader-1 sent an e-mail to another Barclays Dollar LIBOR submitter ("Submitter-2") stating, "Hi (again) We're getting killed on our 3m resets, we need them to be up this week before we roll out of our positions. Consensus for 3m today is 4.78 - 4.7825, it would be amazing if we could go for 4.79...Really appreciate ur help mate." (ellipses in original). Submitter-2 responded, "Happy to help." Barclays's 3-month Dollar LIBOR submission on February 22, 2006 was 4.79%.

15. As a further example, on December 19, 2006, a swaps trader located in New York, New York (“Trader-2”) sent an e-mail to Submitter-1 with the subject line, “3m Libor,” asking, “Can you pls [please] continue to go in for 3m Libor at 5.365 or lower, we are all very long cash here in ny.” Submitter-1 asked, “How long for [Trader-2]?” Trader-2 replied, “Until the effective date goes over year end (i.e. turn drops out) if possible.” Submitter-1 replied, “Will do my best sir.” Trader-2 replied, “Thx.” On December 19, 20, and 21, 2006, Barclays’s 3-month Dollar LIBOR submissions were 5.37%, 5.37%, and 5.375%, respectively. On December 21, 2006, at approximately 12:05 p.m., Trader-2 forwarded the December 19 correspondence to Submitter-1. At approximately 12:05 p.m., Submitter-1 forwarded Trader-2’s e-mail to Submitter-2, stating, “whoops.” At approximately 1:03 p.m., Submitter-1 created an electronic calendar entry stating, “SET 3 MONTH US\$ LIBOR LOW!!!!!!” (emphasis in original) that was scheduled to begin on December 22, 2006 at 9:00 a.m. and continue until January 1, 2007 at 9:30 a.m. On December 22, 2006 and the subsequent trading days through the end of the year, Barclays’s 3-month Dollar LIBOR submissions were 5.36%, 5.365%, 5.35%, and 5.36%, respectively.

16. As another example, on July 29, 2007, at approximately 9:45 p.m., Trader-2 sent an e-mail to Submitter-1, with a copy to a supervising trader in New York, New York (“Trader-3”), with the subject line, “3m cash,” stating, “Pls [please] go for 5.36 libor again, very important that the setting comes as high as possible.....thanks.” (ellipses in original). Barclays’s 3-month Dollar LIBOR submission on July 30, 2007 was 5.36%.

17. In addition, from at least as early as May 2005 through approximately September 2007, certain Barclays Euro swaps traders in London submitted requests for favorable

EURIBOR settings to Barclays EURIBOR submitters in London on an ongoing basis. From approximately September 2007 through at least approximately May 2009, such requests were made occasionally. Barclays rate submitters for EURIBOR accommodated the requests by Euro swaps traders on numerous occasions and submitted Barclays's EURIBOR contributions consistent with the requests.

18. As an example, on July 28, 2006, at approximately 8:26 a.m., a Barclays Euro swaps trader ("Trader-4") sent an e-mail to a Barclays EURIBOR submitter ("Submitter-3") with the subject line, "6m fixing," stating, "Plz [Please] go for LOW 6M fixing today." (emphasis in original). Submitter-3 replied in part, "No probs...low it is today." (ellipses in original). Barclays's 6-month EURIBOR submission on July 28, 2006 was 3.21%, which was 12 basis points lower than its submission the previous day, and was lower than the lowest rate used in the calculation of the EURIBOR fix.

19. As a further example, on Friday, October 13, 2006, a Barclays Euro swaps trader ("Trader-5") sent an electronic communication to Submitter-3 stating in part, "I have a huge fixing on monday...something like 30bn 1m fixing...and i would like it to be very very very high....can you do something to help? i know a big clearer will be ag[a]inst us...and dont [sic] want to loose money [sic] on that one." (ellipses in original). Submitter-3 replied that s/he had been moved within Barclays, but had forwarded the request to another EURIBOR submitter ("Submitter-4") who was covering for Submitter-3. Submitter-3 forwarded the request to Submitter-4 and added, "We always try and do our best to help out..." (ellipses in original). Barclays's 1-month EURIBOR submission on Monday, October 16, 2006, was 3.36%, which was 1 basis point higher than its submission the previous day and was equal to the second-



highest rate submitted by EURIBOR Contributor Panel banks. Within the Contributor Panel, Barclays moved from being tied for the 6<sup>th</sup> highest rank on the previous trading day to being tied for the 2<sup>nd</sup> highest rank.

20. In some instances, from at least as early as August 2006 through approximately January 2007, then on another occasion in approximately June 2009, Barclays Yen swaps traders made requests for favorable Yen LIBOR settings to the Barclays Yen LIBOR submitters. Barclays rate submitters for Yen LIBOR accommodated the requests on some occasions.

21. The purpose of this activity was to manipulate Barclays's Dollar and Yen LIBOR contributions and its EURIBOR contributions, whether by increasing, decreasing, or maintaining the submitted rates, to influence the resulting LIBOR and EURIBOR fixes and thus to have a favorable effect on the swaps traders' trading positions. Because certain swaps traders' compensation was based in part on the profit and loss calculation of the trading books, a purpose of the requests by the swaps traders was to benefit their compensation as well.

22. Because of the high value of the notional amounts underlying derivative transactions tied to LIBOR and EURIBOR, even very small movements in those rates could have a significant impact on the profitability of a trader's trading portfolio. As an example of the potential impact of this activity, on September 28, 2005, in a series of electronic messages, Trader-3 and Trader-1 discussed the next day's 3-month LIBOR submission. Trader-3 stated, "WE WANT TOMORROW'S FIX TO BE 4.07 MINIMUM," repeating, "4.07....NOTHING LESS..." (emphasis and ellipses in original). Trader-3 explained: "We have turn exposure of 837 futures contracts. [F]or every 0.25 bps tomorrows [sic] fix is below 4.0525 we lose 154,687.50 usd [United States Dollars]...if tomorrows [sic] fix comes in at 4.0325 we lose 618,750 usd."

(ellipses in original). Trader-1 replied in part, “I’ll ask [Submitter-1] to go for 4.07.”

Barclays’s 3-month Dollar LIBOR submission on September 29, 2005 was 4.07%, which was the highest rate submitted by any Contributor Panel bank.

*Interbank Swaps Trader Requests*

23. From at least approximately August 2005 through at least approximately May 2008, certain Barclays swaps traders communicated with swaps traders at other Contributor Panel banks and other financial institutions about requesting LIBOR and EURIBOR contributions that would be favorable to the trading positions of the Barclays swaps traders and/or their counterparts at other financial institutions.

24. Certain Barclays swaps traders made requests of traders at other Contributor Panel banks for favorable LIBOR or EURIBOR submissions from those banks. In addition, certain Barclays swaps traders received requests from traders at other banks for favorable LIBOR or EURIBOR submissions from Barclays rate submitters. When Barclays swaps traders did not have trading positions conflicting with their counterparts’ requests, those Barclays swaps traders sometimes would agree to request a LIBOR or EURIBOR submission from the Barclays LIBOR or EURIBOR submitters that would benefit their counterparts’ positions. Those interbank communications included ones in which certain Barclays swaps traders communicated with former Barclays swaps traders who had left Barclays and joined other financial institutions. The likelihood that the LIBOR or EURIBOR fix would be affected increased when other Contributor Panel banks also manipulated their submissions as part of a coordinated effort.

25. From at least approximately August 2006 through at least approximately June 2007, Trader-1, who had left Barclays and joined a financial institution that was not a member of the

Dollar LIBOR Contributor Panel, requested favorable Dollar LIBOR submissions from a current Barclays Dollar swaps trader in London (“Trader-6”), who agreed to make such requests of the Barclays Dollar LIBOR submitter. Barclays’s Dollar LIBOR submissions were consistent with Trader-1’s requests on numerous occasions. In addition, from approximately March 2006 through approximately February 2007, another former Barclays Dollar swaps trader who had joined another financial institution occasionally communicated with Barclays swaps traders about requests for favorable Dollar LIBOR submissions.

26. As an example, on October 26, 2006, at approximately 7:12 a.m., Trader-1 communicated by electronic messages with Trader-6, stating, “where do u think 3m libor will be today?” Trader-6 replied, “[Submitter-1] thinks 38.” Trader-1 responded in part: “wow...unchanged!!!!!!?!?! Short dates have rallied by 0.75bp... So I take it he’s going unchanged? If it comes in unchanged I’m a dead man ha ha.” (ellipses in original). Trader-6 replied, “i’ll [sic] have a chat.” Later that day, Trader-1 wrote: “Dude I owe you big time! Come over one day after work and I’m opening a bottle of Bollinger! Thanks for the libor.” Trader-6 replied, “know [sic] worries!!!” Barclays’s 3-month Dollar LIBOR submission on October 26, 2006 was 5.375%, which was lower than Barclays’s submission on the previous trading day.

27. As another example, on March 29, 2007, at approximately 6:22 a.m., Trader-1 communicated by electronic messages with Trader-6, stating in part, “I know I’m asking for much, but ONLY if u guys care, a low 3m libor would be great...anywhere below 5.35...thanks dude.” (ellipses in original). Later that day, Trader-1 wrote to Trader-6, “Dude, thanks a lot for the libor, can you PLEASE thank [Submitter-1] as well :-).” Trader-6 replied, “anything for

you!!!” Trader-1 responded, “seriously, thanks a million dude.” Barclays’s 3-month Dollar LIBOR contribution on March 29, 2007 was 5.345%.

28. From at least approximately August 2005 to at least approximately May 2008, Barclays Euro swaps traders communicated with swaps traders at other financial institutions that were members of the EURIBOR Contributor Panel about requesting favorable EURIBOR submissions from the EURIBOR submitters at their respective banks. At Barclays, this conduct was primarily undertaken by a Barclays Euro swaps trader, Trader-5, who left Barclays and joined another financial institution in approximately May 2007. While Trader-5 worked at Barclays, Trader-5 communicated with traders at several other Contributor Panel banks about obtaining favorable EURIBOR submissions, and requested favorable EURIBOR submissions from the Barclays EURIBOR submitter. After Trader-5 joined another financial institution, Trader-5 continued communicating with traders at Barclays about requesting favorable EURIBOR settings.

29. As an example, during at least approximately February and March 2007, in addition to contacting the Barclays EURIBOR submitter, Trader-5 communicated with traders at four other EURIBOR Contributor Panel banks and requested that their respective EURIBOR submitters submit low 3-month EURIBOR contributions on March 19, 2007, which was the Monday before the March IMM date. That trading date was particularly significant for Trader-5, who stated that s/he had accumulated financial positions that would benefit from a low 3-month EURIBOR. In one example of Trader-5’s contacts with other banks, on February 6, 2007, in an electronic message, a trader at another Contributor Panel bank asked Trader-5: “[I]n march do you still want a very low 3m cash fixing for imm?” Trader-5 replied, “yeah.” The other trader

continued, “I’m going to put pressure on the treasury so that he sets it very low.” Trader-5 replied, “750k eur/bp [Euros per basis point].” Then, on March 19, 2007, before the EURIBOR submission was due, Trader-5 sent a message to Submitter-3 stating in part: “I am hearing u are bidding the cash....we really need a low 3m,” and “as discussed could u put the 3m as low as possible.” (ellipses in original). Submitter-3 replied, “[W]ill do my best.” Later on March 19, 2007, Trader-5 wrote to a trader at one of these other Contributor Panel banks, stating in part, “this is the way you pull off deals like this,” and “the trick is you must not do this alone.” Trader-5 also stated that after his “2months of preparation” [sic] he had made money in the end. Trader-5 added, “[D]on’t talk about it too much” and “don’t make any noise about it please.” On that same date, Trader-5 wrote to a third trader whom he had previously contacted at another of the Contributor Panel banks and said: “Please [trader name] don’t make any noise about the 3m fixing. [T]his can backfire against us.”

#### *The Implications of the Swaps Traders’ Requests*

30. When Barclays swaps traders made requests of Barclays rate submitters in order to influence Barclays’s benchmark interest rate submissions, and when the submitters accommodated those requests, the manipulation of the submissions affected the fixed rates on some occasions.

31. Barclays entered into interest rate derivatives transactions tied to LIBOR and EURIBOR – such as swaps, forward rate agreements, and futures – with counterparties to those transactions. Many of those counterparties were located in the United States. Those United States counterparties included, among others, asset management corporations, retirement funds, mortgage and loan corporations, and insurance companies. Those counterparties also included

banks and other financial institutions in the United States or located abroad with branches in the United States.

32. In the instances when the published rates were manipulated in Barclays's favor due to Barclays's manipulation of its submissions, that manipulation benefitted Barclays swaps traders, or minimized their losses, to the detriment of counterparties, at least with respect to the particular transactions comprising the trading positions that the traders took into account in making their requests to the rate submitters. Certain Barclays swaps traders and rate submitters who engaged in efforts to manipulate LIBOR and EURIBOR submissions were well aware of the basic features of the derivatives products tied to these benchmark interest rates; accordingly, they understood that to the extent they increased their profits or decreased their losses in certain transactions from their efforts to manipulate rates, their counterparties would suffer corresponding adverse financial consequences with respect to those particular transactions.

33. When the requests of swaps traders for favorable LIBOR and EURIBOR submissions were taken into account by the rate submitters, Barclays's rate submissions were false and misleading. In making and in accommodating the requests, the swaps traders and submitters were engaged in a deceptive course of conduct in an effort to gain an advantage over their counterparties. As part of that effort: (1) swaps traders and submitters submitted and caused the submission of materially false and misleading LIBOR and EURIBOR contributions; and (2) swaps traders, after initiating and continuing their effort to manipulate LIBOR and EURIBOR contributions, negotiated and entered into derivative transactions with counterparties that did not know that Barclays employees were often attempting to manipulate the relevant rate. Moreover, those false and misleading Dollar LIBOR contributions affected or tended to affect

the price of commodities, including Eurodollar futures contracts.

**Instruction by Barclays Management to Submit Lower LIBOR Contributions**

34. According to an August 10, 2007 BBA press release, LIBOR closely reflected the real rates of interest being used by the world's large banks, and it reflected the actual rates at which banks borrowed money from each other.

35. Because a bank's LIBOR contributions, even if they are not based entirely on actual money market transactions, should correspond to the cost at which the bank concludes that it can borrow funds, a bank's LIBOR contribution may be perceived as an indicator of a bank's financial health. If a bank's LIBOR submission is relatively high, that rate could suggest that the bank is paying a relatively high amount to borrow funds. Thus, a bank could be perceived to be experiencing financial difficulties because lenders were charging higher rates to that bank. In addition, higher LIBOR contributions could signal that a bank is willing to pay higher amounts for funds, indicating potential liquidity problems.

36. From approximately August 2007 through at least approximately January 2009, Barclays often submitted inaccurate Dollar LIBORs that under-reported its perception of its borrowing costs and its assessment of where its Dollar LIBOR submission should have been. Certain members of management of Barclays, including senior managers in the treasury department and managers of the money markets desk, directed that the Barclays Dollar LIBOR submitters contribute rates that were nearer to the expected rates of other Contributor Panel banks rather than submitting the proper, higher LIBORs. Barclays Dollar LIBOR submitters, following the direction from certain members of management, submitted rates that they believed would be consistent with the submissions of other Dollar LIBOR Contributor Panel banks, or at

least, that would not be too far above the expected rates of other members of the Contributor Panel. Consequently, on some occasions, Barclays submitted rates that were false because they were lower than Barclays otherwise would have submitted and contrary to the definition of LIBOR.

37. According to internal Barclays communications, for certain time periods, Barclays management instructed the Barclays Dollar LIBOR submitters not to be an “outlier” compared to other Contributor Panel banks, even if Barclays contributed the highest rate; Barclays could be “at the top of the pack” but not too far above the next highest contributor. In adopting that approach, certain managers believed that Barclays’s submitted rates typically would be in the upper quartile of rates submitted by the Contributor Panel banks and thus excluded from the rates used in the calculation of the LIBOR fix. For certain other periods, however, management did not want Barclays to submit a rate higher than other Contributor Panel banks, and instructed the Dollar LIBOR submitters to stay “within the pack” of other members of the Dollar LIBOR Contributor Panel, and to submit rates “in line” with the other contributors. To the extent that those managers had any concerns about Barclays’s submissions being used in the calculation of the LIBOR fix, those concerns apparently were outweighed by their priority for Barclays’s submissions to be “within the pack.”

38. On several occasions, e-mail messages and phone conversations involving a Barclays Dollar LIBOR submitter reflected the LIBOR submitter’s belief that, due to the pressure from Barclays management, Barclays was submitting its LIBOR contributions lower than the rate at which Barclays was borrowing or could have borrowed funds, and lower than the rate at which Barclays should have been submitting its LIBOR contributions, and thus that submitter believed



s/he was contributing a false rate.

39. Barclays's submissions of improperly low Dollar LIBORs as a result of management instructions began in approximately late August 2007. That month, Barclays twice drew on the Bank of England's emergency liquidity facility (known as the "window"), borrowing approximately £1.6 billion the second time. News articles about the withdrawals in late August 2007 noted a decline in Barclays's share price and questioned Barclays's liquidity position, while Barclays explained publicly that the visits to the window were due to technical glitches. Meanwhile, because of the onset of the financial crisis, there was diminished liquidity in funding markets, and Barclays set certain of its LIBOR submissions relatively high compared to other Contributor Panel banks. In early September 2007, Barclays received negative press coverage concerning Barclays's high LIBOR submissions in Sterling, Euro, and Dollar. A news article questioned Barclays's liquidity position, in light of Barclays's high LIBOR submissions and its visits to the Bank of England's window, and noted that Barclays's share price had fallen.

40. Senior managers within Barclays expressed concern about the negative publicity. The managers on the money markets desk and in the treasury department who gave the instruction to submit lower LIBORs, which resulted in improperly low LIBOR submissions, sought to avoid inaccurate, negative attention about Barclays's financial health as a result of its high LIBOR submissions relative to other banks. Those managers wanted to prevent any adverse conclusions about Barclays's borrowing costs, and more generally, its financial condition, because they believed that those conclusions would be mistaken and that other Contributor Panel banks were submitting unrealistically low Dollar LIBORs. Those Barclays managers sought to avoid what they believed would be an inaccurate perception that Barclays

was not in good financial shape when compared to its peers. Thus, Barclays engaged in this misconduct in order to reduce the reputational risk associated with proper, higher LIBOR submissions. In other words, as Barclays employees stated in internal communications, the purpose of the strategy of under-reporting Dollar LIBORs was to keep Barclays's "head below the parapet" so that it did not get "shot" off.

41. As stated above, the intent of the Barclays managers who gave the instruction and the submitters who contributed improperly low rate submissions in response to the instruction was to influence Barclays's benchmark interest rate submissions, not the resulting fixes. On some occasions, however, the manipulation of Barclays's submissions affected the fixed rates.

42. During approximately November 2007 through approximately October 2008, certain employees at Barclays sometimes raised concerns with individuals at the BBA, the Financial Services Authority, the Bank of England, and the Federal Reserve Bank of New York concerning the diminished liquidity available in the market and their views that the Dollar LIBOR fixes were too low and did not accurately reflect the market. In some of those communications, those employees advised that all of the Contributor Panel banks, including Barclays, were contributing rates that were too low. Those employees attempted to find a solution that would allow Barclays to submit honest rates without standing out from other members of the Contributor Panel, and they expressed the view that Barclays could achieve that goal if other banks submitted honest rates. These communications, however, were not intended and were not understood as disclosures through which Barclays self-reported misconduct to authorities. Indeed, after the communications, Barclays continued improperly to take concerns about negative publicity into account when making its submissions. Moreover, on other

occasions, those employees did not provide full and accurate information during their conversations with these external parties. Further, at least one occasion when Barclays's Dollar LIBOR submissions were questioned by the media, Barclays responded that Barclays always posted correct LIBORs.

43. As an example of one communication between a Barclays employee and a representative of the BBA, on November 29, 2007, a Barclays manager ("Manager-1") contacted a representative of the BBA ("BBA Representative-1") and said that s/he was "just talking off the record" so that BBA Representative-1 would be "aware" of Dollar LIBORs. Manager-1 stated that Dollar "LIBORs are being set lower than where they ought to be." Manager-1 explained that Contributor Panel banks are submitting rates that are too low because "banks are afraid to stick their heads above the parapet and post higher numbers because of what happened to [Barclays] when [Barclays] did. You get shot at." Manager-1 explained his/her view that Barclays was posting higher LIBORs than any other bank, and that other banks "are reluctant to post higher and because no one will get out of the pack, the pack sort of stays low." Manager-1 named certain other banks that s/he believed were submitting 1-month Dollar LIBORs lower than where those banks could get funds. Manager-1 encouraged BBA Representative-1 to send a letter to the Contributor Panel about the importance of setting LIBORs at the correct levels.

44. As another example of a communication between Barclays and the BBA, on June 10, 2008, the BBA issued a request for consultation to Contributor Panel banks in light of the diminished liquidity during the financial crisis and news articles questioning the accuracy of LIBOR. The BBA noted suggestions that contributor banks may be exhibiting "herd" behavior in their submitted rates to avoid "speculation and rumour mongering." Manager-1 formally

responded to the request for consultation on behalf of Barclays to BBA Representative-1 but did not disclose Barclays's management directive to submit lower LIBORs in order to avoid negative media attention, which directive had resulted in improperly low LIBOR submissions. In an August 5, 2008 report, the BBA concluded that contributing banks that responded to the BBA's request for consultation were confident that their submitted rates were "truly reflective of their perceived borrowing costs."

45. A series of communications in late November and early December 2007 provide examples of Barclays's communications with the FSA about its LIBOR submissions. On approximately November 30, 2007, a discussion occurred between a representative of Barclays and the FSA; a few days later, one Barclays manager informed another manager that during the discussion with the FSA: "We didn't say anything along the lines of, you know, we're not posting where we think we should, I just talked about dislocations, Libors, liquidity premium, and kept it simple, shall we say." On December 4, 2007, a Barclays LIBOR submitter sent an internal e-mail raising concerns about the Dollar LIBOR rates submitted by Contributor Panel banks, including Barclays. That submitter stated that s/he was submitting 1-month Dollar LIBOR lower than s/he was paying, and lower than s/he would have set if "given a free hand." That submitter stated that s/he was worried that the Contributor Panel banks' submissions, including Barclays's, were false and dishonest. On December 5, 2007, certain members of Barclays senior management and a senior Barclays compliance manager decided to raise the issue of LIBOR submissions with the FSA again. The next day, December 6, 2007, a senior Barclays compliance manager contacted a representative of the FSA. That compliance manager expressed concern about other banks' LIBOR submissions. The compliance manager did not

inform the FSA of the management directive to lower Barclays's LIBOR submissions, or of the concerns of the LIBOR submitter, even though the compliance manager had received the December 4, 2007 e-mail. There is no recording of the conversation, but the compliance manager later that day purported to summarize the conversation in an internal e-mail to several members of Barclays senior management (but not the LIBOR submitters), stating that s/he told the FSA that the 1-month to 3-month Dollar LIBOR settings seemed incorrect and that Barclays had consistently been the highest (or one of the two highest) rate provider in recent weeks, but was reluctant to go higher given its recent media experience. The compliance manager also informed those members of senior management that the FSA had agreed that Barclays's approach seemed sensible under the circumstances.

46. As another example of a communication between Barclays and the FSA, on March 5, 2008, the FSA asked Barclays what it was paying for funding in certain tenors and currencies. Manager-1 and a LIBOR submitter ("Submitter-5") then discussed how to respond. Submitter-5 said that Barclays was obtaining funds in 1-year Dollars at LIBOR plus 20 basis points. Manager-1 said that s/he would rather not disclose that Barclays was borrowing Dollars "way over LIBOR" and would rather indicate that it was paying a rate equal to LIBOR. Submitter-5 agreed that if s/he responded with "what the honest truth" was it might be a "can of worms." Submitter-5 responded to the FSA by e-mail and inaccurately stated that Barclays was paying for 1-year Dollars at LIBOR "flat."

47. On October 29, 2008, a senior Bank of England official contacted a senior Barclays manager. The Bank of England official discussed the external perceptions of Barclays's LIBOR submissions and questioned why Barclays's submissions were high compared to other

Contributor Panel banks. As the substance of the conversation was passed to other Barclays employees, certain Barclays managers formed the understanding that they had been instructed by the Bank of England to lower Barclays's LIBOR submissions, and instructed the Barclays Dollar and Sterling LIBOR submitters to do so – even though that was not the understanding of the senior Barclays individual who had the call with the Bank of England official. Beginning on November 6, 2008, as a result of increased liquidity in the market, Barclays no longer needed to take into account the perceived instruction from the Bank of England.

48. During the period of improperly lower LIBOR submissions, Barclays often submitted rates that were not outliers compared to the other members of the Contributor Panel, but were nevertheless higher than the rates included in the average for the LIBOR fix. For example, in 3-month Dollar LIBOR from approximately August 2007 through December 2008, Barclays submitted a rate that was higher than any rate used in the calculation of the LIBOR fix approximately 64% of the time. During that same period, Barclays submitted a rate that was lower than any rate used in the calculation of the LIBOR fix less than 1% of the time.

49. On at least a few occasions from approximately September 2007 through at least approximately May 2009, Barclays submitted improperly low LIBOR contributions for Yen and Sterling in response to concerns of inaccurate, negative media attention about Barclays's high LIBOR submissions compared to other Contributor Panel banks and a belief within Barclays that other Contributor Panel banks were submitting unrealistically low LIBORs.

### **Barclays's Accountability**

50. Barclays acknowledges that the wrongful acts taken by the participating employees in furtherance of this misconduct set forth above were within the scope of their employment at

Barclays. Barclays acknowledges that the participating employees intended, at least in part, to benefit Barclays through the actions described above. Barclays acknowledges that due to the misconduct, Barclays, including the Barclays branch in New York, has been exposed to substantial financial risk, and as a result of the penalties imposed by this non-prosecution agreement and under agreements reached with other government authorities, has suffered actual financial loss.