

## FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the  
Continued Membership  
of  
Barclays Capital Inc.  
(CRD No. 19714)

Notice Pursuant to  
Rule 19h-1  
Securities Exchange Act  
of 1934<sup>1</sup>

SD-2343

**December 12, 2023**

### **I. Introduction**

On October 14, 2022, Barclays Capital Inc. (“Barclays” or “Firm”) submitted a Membership Continuance Application (“MC-400A” or “Application”) to FINRA’s Credentialing Registration, Education, and Disclosure Department (“CRED”).<sup>2</sup> The Application seeks to permit the Firm, a FINRA member, to continue its membership with FINRA notwithstanding its statutory disqualification. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Supervision (“FINRA,” “Member Supervision,” or “Department”) approves the Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”).

### **II. The Statutorily Disqualifying Event**

The Firm is subject to statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D) and (E), as a result of a September 2022 Order issued by the Securities and Exchange Commission (“SEC” or “Commission”) finding Barclays willfully violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) and failed reasonably to supervise its employees with a view to preventing or detecting certain of its employees’ aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder (the “SEC Order”).<sup>3</sup>

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<sup>1</sup> This SEA Rule 19h-1 Notice, along with supporting Exhibits, addresses several technical issues and replaces the SEA Rule 19h-1 Notice filed by FINRA on October 25, 2023.

<sup>2</sup> See MC-400A Application and related attachments compiled by CRED, with a cover memorandum dated October 27, 2022, collectively attached as Exhibit 1.

<sup>3</sup> See SEC Order, *In re Barclays Capital Inc.*, Exchange Act Release No. 95919 (Sept. 27, 2022), attached as Exhibit 2.

The SEC Order also triggered disqualification under Rules 262(a)(4), 506(d)(1)(iv), and 602(c)(3) of the Securities Act of 1933 and Rule 503(a)(4)(ii) of Regulation Crowdfunding. On September 27, 2022, the

According to the SEC Order, from at least January 2018 to September 2021, employees of Barclays sent and received off-channel communications that related to the Firm’s business, and a majority of these written communications was not maintained or preserved by the Firm.<sup>4</sup> Further, supervisors who were responsible for preventing this misconduct among junior employees routinely communicated off-channel using their personal devices, and, in so doing, failed to comply with Firm policies by communicating using non-Firm approved methods on their personal devices about the Firm’s broker-dealer business.<sup>5</sup>

The Firm was ordered to cease and desist from committing or causing any future violations, censured, ordered to pay a civil money penalty of \$125,000,000, and ordered to comply with undertakings.<sup>6</sup>

### **III. Remedial Measures**

In its Application, the Firm represented that it has undertaken significant remedial measures in response to the SEC’s findings, including making a significant investment in its technology solutions such as rolling out new software and enhancing its surveillance programs, revising its policies and procedures, enhancing its training programs regarding the use of approved communications methods on personal devices, and updating its breach and disciplinary framework applicable to the use of unapproved communications channels.<sup>7</sup> According to the SEC Order, the SEC considered the Firm’s prompt remedial actions and cooperation with the Commission when determining to accept the Offer of Settlement.<sup>8</sup>

### **IV. Firm Background**

The Firm has been a FINRA member since 1987 and is headquartered in New York, NY, with 16 branches, seven of which are Offices of Supervisory Jurisdiction.<sup>9</sup> The Firm employs approximately 3070 registered representatives (including 567 registered principals) and 13,944 non-registered fingerprint employees.<sup>10</sup> It does not employ any

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SEC granted a waiver from the application of the disqualification provisions of these Rules. *See In re Certain Broker-Dealer Practices*, Securities Act Release No. 11109 (Sept. 27, 2022), attached as Exhibit 3.

<sup>4</sup> *See* Exhibit 2 at p. 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at p. 10. The Firm represents that it paid this amount in full on September 29, 2022. *See* Exhibit 1 at p. 3.

<sup>7</sup> *See* Exhibit 1 at FINRA00036 – 40.

<sup>8</sup> *See* Exhibit 2 at p. 6.

<sup>9</sup> FINRA confirmed this through analysis of the Firm’s information contained in the Central Registration Depository (“CRD”), last performed on September 14, 2023.

<sup>10</sup> *Id.*

statutorily disqualified individuals.<sup>11</sup>

Barclays is approved to engage in the following lines of business: exchange Member engaged in exchange commission business other than floor activities, exchange Member engaged in floor activities, broker or dealer making inter-dealer markets in corporate securities over-the-counter, broker or dealer retailing corporate equity securities over-the-counter, broker or dealer selling corporate debt securities, underwriter or selling group participant (corporate securities other than mutual funds), mutual fund retailer, U.S. government securities dealer, U.S. government securities broker, municipal securities dealer, municipal securities broker, solicitor of time deposits in a financial institution, real estate syndicator, put and call broker or dealer or option writer, broker or dealer selling securities of non-profit organizations, broker or dealer selling tax shelters or limited partnerships in primary distributions, broker or dealer selling tax shelters or limited partnerships in the secondary market, non-exchange member arranging for transactions in listed securities by exchange member, trading securities for own account, private placements of securities, broker or dealer selling interests in mortgages or other receivables, engages in other securities business, and effects transactions in commodity futures/commodities/commodity options as broker for others or dealer for own account.<sup>12</sup>

The Firm is a member of the following self-regulatory organizations (“SROs”): BOX Exchange LLC (“BOX”); Cboe Exchange, Inc. (“Cboe”); Cboe BYX Exchange, Inc. (“BYX”); Cboe BZX Exchange, Inc. (“BZX”); Cboe C2 Exchange, Inc. (“C2”); Cboe EDGA Exchange, Inc. (“EDGA”); Cboe EDGX Exchange, Inc. (“EDGX”); Investors’ Exchange LLC (“IEX”); Long-Term Stock Exchange, Inc. (“LTSE”); MEMX LLC (“MEMX”); MIAX Emerald, LLC (“MIAX Emerald”); MIAX Pearl, LLC (“MIAX Pearl”); Miami International Securities Exchange, LLC (“MIAX”); NYSE American LLC (“NYSE American”); NYSE Arca, Inc. (“NYSE Arca”); NYSE Chicago, Inc. (“NYSE Chicago”); NYSE National, Inc. (“NYSE National”); Nasdaq BX, Inc. (“BX”); Nasdaq GEMX, LLC (“GEMX”); Nasdaq ISE, LLC (“ISE”); Nasdaq MRX, LLC (“MRX”); Nasdaq PHLX LLC (“PHLX”); The Nasdaq Stock Market LLC (“Nasdaq”); Nasdaq Options Market (“NOM”); New York Stock Exchange LLC (“NYSE”);<sup>13</sup> Municipal Securities Rulemaking Board (“MSRB”); The Depository Trust Company (“DTC”), the Fixed Income Clearing Corporation Government Securities Division (“FICC-GOV”) and Mortgage-Backed Securities Division (“FICC-MBS”); and the National Securities Clearing Corporation (“NSCC”).<sup>14</sup>

### **Recent Examinations**

In the past two years, FINRA completed three routine examinations (one of which was

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<sup>11</sup> *Id.*

<sup>12</sup> See CRD Excerpt: Types of Business, attached as Exhibit 4.

<sup>13</sup> See CRD Excerpt: Organization Registration Status, attached as Exhibit 5.

<sup>14</sup> Membership in these organizations was verified by FINRA staff through a search of public member directories, last performed on September 14, 2023.

conducted on behalf of other SROs including Cboe and C2 pursuant to Regulatory Service Agreements (“RSAs”), and six non-routine examinations of the Firm that resulted in Cautionary Action Letters (“CALs”). The SEC also completed one examination.

#### A. FINRA Routine Examinations

The examination completed in June 2022 resulted in a Cautionary Action issued by FINRA’s Department of Enforcement (“Enforcement”) for violations pertaining to inaccurately disclosing on confirmations for certain unregistered secondary distribution transactions that the Firm was compensated through a commission equivalent, publishing inaccurate reports of order execution information, failing to record the time of cancellation on approximately 4,000 order memoranda, failing to conduct the reviews required by its “Riskless Principal Report/Related Market Center” written supervisory procedure, submitting millions of inaccurate reports to FINRA/Nasdaq Trade reporting facility relating to orders routed between its Sales Desk and Trade Desk, failing to transmit reports to FINRA/Nasdaq and the Order Audit Trail System (“OATS”) relating to orders from its affiliate, and failing to transmit to OATS reports relating to its Portfolio Swap flow and its SUBM flow.<sup>15</sup>

The examination completed in April 2022 resulted in seven exceptions, three of which resulted in Cautionary Action and four of which were referred to Enforcement for further review.<sup>16</sup> The Cautionary Action exceptions pertained to failures to: make appropriate disclosures of conflicts related to compensation from affiliates and underwriting and municipal clients (as well as failures to supervise these disclosures), distribute net designations or group net sales by a customer in connection with the purchase of securities as due to a member of a syndicate or similar account, and timely register the Firm’s Managing Director as a Securities Trader Principal.<sup>17</sup> The Firm responded in writing that it took steps to correct the deficiencies noted in the Cautionary Action by amending and updating their conflicts of interest and potential conflicts on disclosure documents, providing a summary of actual expenses to syndicate members prior to final settlement and revised their process for providing syndicate expense information, and registering the previously unregistered principal and making changes to its processes to avoid this issue in the future.<sup>18</sup> The four additional exceptions referred to Enforcement<sup>19</sup> relate to, among other things, the Firm’s failure to comply with rules regarding reserves and custody of securities, inadequate due diligence in updating its processes related to the change in

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<sup>15</sup> See Disposition Letter for Examination No. 20150442272 dated June 29, 2022 (the Firm did not provide a response to this CAL), attached as Exhibit 6. This examination also resulted in FINRA AWC No. 2015044227201 dated June 29, 2022, discussed below at p. 8 and Exhibit 19.

<sup>16</sup> See Disposition Letter for Examination No. 20200651016 dated April 12, 2022, Examination Report dated August 31, 2021 and Firm Response dated September 24, 2021, collectively attached as Exhibit 7.

<sup>17</sup> *Id.* at FINRA pp. 1, 9-11 (Exceptions 5-7).

<sup>18</sup> *Id.* at FINRA pp. 17-20.

<sup>19</sup> *Id.* at FINRA p. 1 (Exceptions 1-4). As of the date of this Notice, the exceptions referred to Enforcement remain open.

standard settlement cycle from T+3 to T+2, failure to include capital charges associated with certain aged short security differences in its system enhancements and automation updates around the Type 1 debits and suspense items impacting customer reserve formula and net capital computation, and failure to maintain an adequate process to identify instances where the Firm would be required to calculate open contractual commitment charges on its offerings for its daily net capital computations.<sup>20</sup>

In October 2021, FINRA Enforcement issued a Cautionary Action to the Firm on behalf of Cboe and C2 for failing to have written supervisory procedures in place reasonably designed to prevent and detect violations of a Chief Compliance Officer's registration requirements.<sup>21</sup>

#### **B. FINRA Non-Routine Examinations**

In September 2023, FINRA issued a Cautionary Action to the Firm for failing to comply with the trade reporting exception for Unregistered Secondary Distributions ("USD") under FINRA Rule 6380A in several ways, including failing to ensure the Firm was properly and accurately determining whether transactions qualified for an exception from trade reporting, insufficiently documenting the basis for relying on the trade reporting exception, failing to submit timely and accurate USDT notifications, and failing to create, maintain, and enforce supervisory procedures reasonably designed to comply with the trade reporting exception.<sup>22</sup> The Firm responded in writing that it improved its record-keeping processes, updated its procedures related to USDs and USDT notifications, and enhanced its trade reporting worksheets.<sup>23</sup>

In May 2023, FINRA issued a Cautionary Action to the Firm for failing to store certain electronic records in non-erasable, non-rewritable format during the period January 2021 through July 2022.<sup>24</sup>

In September 2022, FINRA issued a Cautionary Action to the Firm for failing to establish and maintain a supervisory system reasonably designed to identify whether its alternative trading system exceeded allowed trading thresholds.<sup>25</sup> As a result, during certain timeframes, the Firm's alternative trading system exceeded allowable trading thresholds and the Firm may have failed to comply with certain periodic requirements of Regulation

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<sup>20</sup> *Id.* at FINRA pp. 6-9.

<sup>21</sup> See Disposition Letter for Examination No. 20190606442 dated October 13, 2021 (the Firm did not provide a response to this CAL), attached as Exhibit 8.

<sup>22</sup> See Disposition Letter for Examination No. 20190641455 dated September 12, 2023, Cautionary Action Letter Supplement (undated), and Firm Response dated October 3, 2023, collectively attached as Exhibit 9.

<sup>23</sup> *Id.* at FINRA pp. 10-15.

<sup>24</sup> See Disposition Letter and Examination Report for Examination No. 20220761528 dated May 18, 2023, attached as Exhibit 10. The Firm was not required to submit a response.

<sup>25</sup> See Disposition Letter for Examination No. 20200663335 dated September 15, 2022 (the Firm did not provide a written response), attached as Exhibit 11.

SCI.<sup>26</sup> The Firm also failed to establish and maintain written supervisory procedures prohibiting persons who perform a supervisory function from supervising their own activities.<sup>27</sup>

In August 2022, FINRA issued a Cautionary Action to the Firm for reporting inaccurate CAT data from June 22, 2020 through November 30, 2021.<sup>28</sup> The Firm responded in writing that it implemented changes to its technology to resolve the issues.<sup>29</sup>

In December 2021, FINRA issued a Cautionary Action to the Firm in relation to the Firm's incorrect riskless non-media reports.<sup>30</sup> Further, the Firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance with FINRA Rules 7230A(i) and 7330(h).<sup>31</sup> The Firm responded in writing that it instituted a quarterly Riskless Principal review and performs a daily reconciliation of Riskless Principal trades.<sup>32</sup>

In October 2021, FINRA issued a Cautionary Action to the Firm related to the Firm's failure to properly report media trades in a principal capacity.<sup>33</sup> The Firm responded in writing that it instructed its sales traders to stop using the feature for real time publishing of executions back to clients for special settlement trades and implemented a surveillance control to monitor for this type of activity.<sup>34</sup>

### C. SEC Examinations

An SEC Examination concluded in May 2022 identified the Firm's failure to accurately compute the charges on aged failed-to-deliver transactions pursuant to SEA Rule 15c3-1(c)(2)(ix) as required in the Firm's ledgers and net capital computations, as well as the Firm's failure to enforce its written supervisory procedures related to those computations.<sup>35</sup> The exam resulted in a deficiency letter to the Firm.<sup>36</sup> The Firm responded in writing that

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<sup>26</sup> *Id.* at p. 2.

<sup>27</sup> *Id.*

<sup>28</sup> See Disposition Letter for Examination No. 20210708056 dated August 30, 2022 and Firm Response dated September 20, 2022, collectively attached as Exhibit 12.

<sup>29</sup> *Id.* at FINRA p. 3.

<sup>30</sup> See Disposition Letter for Examination No. 20200673255 dated December 22, 2021 and Firm Response dated February 1, 2022, collectively attached as Exhibit 13.

<sup>31</sup> *Id.* at FINRA p. 1.

<sup>32</sup> *Id.* at FINRA p. 3.

<sup>33</sup> See Disposition Letter for Examination No. 20190633243 dated October 15, 2021 and Firm Response dated November 19, 2021, collectively attached as Exhibit 14.

<sup>34</sup> *Id.* at FINRA p. 3.

<sup>35</sup> See SEC Examination Letter for File No. 8-41342 dated May 20, 2022 and Firm Response dated June 17, 2022, collectively attached as Exhibit 15.

<sup>36</sup> *Id.*

it took steps to systematically enhance the Firm's calculation tool.<sup>37</sup>

### **Regulatory Actions**

Barclays has been the subject of recent disciplinary matters resulting in seven Letters of Acceptance, Waiver, and Consent ("AWCs") entered into with FINRA; three Letters of Consent entered into with Cboe; one Letter of Consent entered into with C2; one fine assessment from ICE Clear Credit LLC ("ICE"); one AWC with NYSE; three AWCs with NYSE American; three AWCs with NYSE Arca; one AWC with PHLX; one order issued by the Commodities Futures Trading Commission ("CFTC"); and four orders issued by the SEC, in addition to the order that resulted in the instant Application.

#### **A. FINRA Actions**

On April 18, 2023, the Firm entered into an AWC with FINRA in connection with the Firm's failure to report, or inaccurate reporting of, over-the counter positions to the Large Options Positions Reporting system in approximately 4.3 million instances from January 2011 through December 2022, in violation of FINRA Rules 2360(b)(5) and 2010.<sup>38</sup> The Firm also failed to establish and maintain a supervisory system reasonably designed to achieve compliance with FINRA Rule 2360(b)(5) during the same time period in violation of NASD Rule 3010 and FINRA Rules 3110 and 2010.<sup>39</sup> The Firm consented to a censure and a \$2,500,000 fine.<sup>40</sup>

On November 21, 2022, the Firm entered into an AWC with FINRA in connection with the Firm's failure to accurately state its daily trading volume advertised through Bloomberg, L.P.<sup>41</sup> Specifically, the Firm overstated its trading volume in thousands of instances by approximately 147 million shares between January 2014 and February 2019 in violation of FINRA Rules 5210 and 2010.<sup>42</sup> The Firm consented to a censure and a \$175,000 fine.<sup>43</sup>

On October 4, 2022, the Firm entered into an AWC with FINRA in connection with the Firm's failure to meet its best execution obligations.<sup>44</sup> Specifically, the Firm's "reviews of

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<sup>37</sup> *Id.* at FINRA p. 5.

<sup>38</sup> See FINRA AWC No. 2019061076001 dated April 18, 2023 and CRD Disclosure for Occurrence 2269007, collectively attached as Exhibit 16.

<sup>39</sup> *Id.* at FINRA p. 2.

<sup>40</sup> *Id.* at FINRA p. 4. The Firm paid the fine in connection with this matter. *Id.* at FINRA p. 9.

<sup>41</sup> See FINRA AWC No. 2019061298301 dated November 21, 2022 and CRD Disclosure for Occurrence 2242431, collectively attached as Exhibit 17.

<sup>42</sup> *Id.* at FINRA p. 2.

<sup>43</sup> *Id.* at FINRA p. 3. The Firm paid the fine in connection with this matter. *Id.* at FINRA p. 8.

<sup>44</sup> See FINRA AWC No. 2014041808601 dated October 4, 2022 and CRD Disclosure for Occurrence 2232234, collectively attached as Exhibit 18.

customer execution quality failed to meet the reasonable diligence standard of FINRA Rule 5310 and the regular-and-rigorous review requirements of FINRA Rule 5310.09.”<sup>45</sup> The Firm also failed to reasonably supervise for best execution in violation of NASD Rules 3010 and FINRA Rules 3110 and 2010.<sup>46</sup> The Firm consented to a censure and a \$2,000,000 fine.<sup>47</sup>

On June 29, 2022, the Firm entered into an AWC with FINRA in connection with trade confirmations the Firm sent to customers containing inaccurate information in violation of Exchange Action Section 17(a), Exchange Act Rule 17a-3(a)(8), NASD Rule 3110, and FINRA Rules 4511 and 2010.<sup>48</sup> The Firm also failed to reasonably supervise its compliance with confirmation requirements in violation of NASD Rule 3010 and FINRA Rules 3110 and 2010.<sup>49</sup> The Firm consented to a censure, a \$2.8 million fine, and agreed to certify within 120 days that it has corrected the trade confirmation issue and implemented additional supervisory procedures.<sup>50</sup>

On February 24, 2022, the Firm entered into an AWC with FINRA in connection with the Firm’s failure to apply market access controls and procedures to orders routed by one of its risk management systems in violation of Section 15(c) of the Exchange Act, Rules 15c3-5(b) and (c) thereunder, and FINRA Rule 2010.<sup>51</sup> The Firm consented to a censure and a \$350,000 fine.<sup>52</sup>

On December 1, 2020, the Firm entered into an AWC with FINRA in connection with the Firm’s failure to timely report transactions in TRACE-eligible securities, over-reporting Treasury transactions to TRACE, and capturing the incorrect execution time of transactions to TRACE in violation of FINRA Rules 6730 and 2010, as well as Exchange Act Rule 17a-3.<sup>53</sup> The Firm also had several related supervisory failures in violation of FINRA Rules

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<sup>45</sup> *Id.* at FINRA p. 4.

<sup>46</sup> *Id.* at FINRA p. 5.

<sup>47</sup> *Id.* The Firm paid the fine in connection with this matter. *Id.* at FINRA p. 10.

<sup>48</sup> See FINRA AWC No. 2015044227201 dated June 29, 2022, CRD Disclosure for Occurrence 2213046, and Certification of Compliance with Undertakings dated November 8, 2022, collectively attached as Exhibit 19.

<sup>49</sup> *Id.* at FINRA pp. 5-6.

<sup>50</sup> *Id.* at FINRA pp. 6-7. The Firm paid the fine in connection with this matter and provided the required certification regarding the undertakings. *Id.* at FINRA pp. 12, 15.

<sup>51</sup> See FINRA AWC No. 2019063248401 dated February 24, 2022 and CRD Disclosure for Occurrence 2185151, collectively attached as Exhibit 20.

<sup>52</sup> *Id.* at FINRA p. 3. The Firm paid the fine in connection with this matter. *Id.* at FINRA p. 8.

<sup>53</sup> See FINRA AWC No. 2017054054501 dated December 1, 2020, CRD Disclosure for Occurrence 2098775, and Certification Letters from the Firm regarding compliance with the required undertakings, collectively attached as Exhibit 21.

3110 and 2010.<sup>54</sup> The Firm consented to a censure, a \$650,000 fine, and to revise the Firm's written supervisory procedures related to the above-referenced violations.<sup>55</sup>

#### **B. CFTC Action**

On September 27, 2022, the CFTC issued an order finding that the Firm violated Section 4g of the Commodity Exchange Act (7 U.S.C. § 6g), and Commission Regulations 1.31, 1.35, and 166.3 (17 C.F.R. §§ 1.31, 1.35, 166.3 (2021)).<sup>56</sup> These violations were based on the same misconduct underlying the SEC Order that is the subject of the Firm's Application. The Firm was ordered to cease and desist from violating the cited sections of the Commodity Exchange Act and Commission Regulations, to pay a \$75,000,000 fine jointly and severally with Barclays Bank PLC, and to comply with various undertakings related to the Firm's preservation of records related to electronic communications.<sup>57</sup>

#### **C. Cboe Action**

On December 22, 2021, Cboe issued a decision incorporating a Letter of Consent finding that the Firm's financial risk management controls were not reasonably designed to prevent the entry of erroneous orders on Cboe, in violation of Exchange Act Rule 15c3-5 and Cboe Rule 4.2.<sup>58</sup> The Firm consented to a censure and a \$40,000 fine.<sup>59</sup>

#### **D. Cboe and C2 Related Actions**

On October 13, 2021, Cboe and C2 issued decisions incorporating Letters of Consent for violations of analogous rules. The regulators found that the Firm failed to qualify and register its CCO as a Securities Compliance Officer as required under Cboe and C2 rules.<sup>60</sup> The Firm consented to censures and dual \$5,000 fines.<sup>61</sup>

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<sup>54</sup> *Id.* at FINRA pp. 3-4.

<sup>55</sup> *Id.* at FINRA p. 4. The Firm paid the fine in connection with this matter. *Id.* at FINRA p. 10. The Firm also certified that it complied with the additional undertakings. *Id.* at FINRA pp. 13-16.

<sup>56</sup> See CFTC Order, *In re Barclays Bank PLC and Barclays Capital Inc.*, CFTC Docket No. 22-39 (Sept. 27, 2022), attached as Exhibit 22. FINRA has determined that this is not a disqualifying event.

<sup>57</sup> *Id.* at pp. 10-12. The Firm represents that it paid the fine on September 29, 2022. See correspondence from Wilmerhale to FINRA dated January 23, 2023, excluding attachments, attached as Exhibit 23 at p. 2. The Firm also represents that it is in compliance with the undertakings required by the CFTC Order. See correspondence from Wilmerhale to FINRA dated June 20, 2023, attached as Exhibit 24.

<sup>58</sup> See Cboe Disciplinary Decision and Letter of Consent, *In re Barclays Capital Inc.*, File No. USRI-9538-01 (Dec. 22, 2021), attached as Exhibit 25.

<sup>59</sup> *Id.* at FINRA p. 5. The Firm represents that it paid the fine on January 6, 2022. See Exhibit 23 at p. 2.

<sup>60</sup> See Cboe Disciplinary Decision and Letter of Consent, *In re Barclays Capital Inc.*, File No. USE-2202-01 (Oct. 13, 2021), and C2 Disciplinary Decision and Letter of Consent, *In re Barclays Capital Inc.*, File No. USE-2202-02 (Oct. 13, 2021), collectively attached as Exhibit 26.

<sup>61</sup> *Id.* at FINRA pp. 4, 11. The Firm represents that it paid the fines on October 26, 2021. See Exhibit 23 at

#### E. ICE Action

On January 5, 2021, the Firm was notified that ICE was assessing a fine against it for failing to fulfill the Firm's price submission obligations in violation of ICE Rules 404(b) and 702(e).<sup>62</sup> The Firm consented to a fine of \$178,000.<sup>63</sup>

#### F. NYSE Action

On November 2, 2020, the Firm entered into an AWC with NYSE whereby it was found that the Firm "violated NYSE Rule 123C or NYSE Rule 7.35B by improperly cancelling 5,853 [Market on Close] or [Limit on Close] orders after the prescribed cut-off time" and "further violated NYSE Rule 3110 by failing to implement a supervisory system and controls reasonably designed to achieve compliance with NYSE Rules 123C and 7.35B."<sup>64</sup> The Firm consented to a censure and \$120,000 fine.<sup>65</sup>

#### G. NYSE American Action

On November 11, 2021, the Firm entered into an AWC with NYSE American in which it was found that the Firm violated NYSE American Rule 955NY(c) by effecting equity transactions in the securities underlying the option after gaining knowledge of undisclosed terms and conditions of an options order.<sup>66</sup> The Firm also violated NYSE American Rule 320(e) by failing to establish and maintain supervisory systems reasonably designed to ensure compliance with Rule 955NY(c).<sup>67</sup> The Firm consented to a censure and \$55,000 fine.<sup>68</sup>

#### H. NYSE Arca Action

On October 19, 2022, the Firm entered into an AWC with NYSE Arca in connection with failure to report index options positions to the Exchange on their expiration date in violation of NYSE Arca Rule 6.6-O.<sup>69</sup> The Firm also failed to report certain positions as

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p. 2.

<sup>62</sup> See ICE Notice of Violation of Rule 404(b) to Barclays Capital Inc., ICE Matter No. 2020-404b-024 dated January 5, 2021, attached as Exhibit 27.

<sup>63</sup> *Id.* The Firm represents that it paid the fine on March 19, 2021. *See* Exhibit 23 at p. 3.

<sup>64</sup> See NYSE AWC Nos. 2019-12-00042 & 2019-07-00026 dated November 2, 2020, attached as Exhibit 28.

<sup>65</sup> *Id.* at p. 4. The Firm represents that it paid the fine on December 14, 2020. *See* Exhibit 23 at p. 3.

<sup>66</sup> See NYSE American AWC No. 2019-12-00043 dated November 11, 2021, attached as Exhibit 29.

<sup>67</sup> *Id.* at p. 4.

<sup>68</sup> *Id.* The Firm represents that it paid the fine on December 9, 2021. *See* Exhibit 23 at p. 2.

<sup>69</sup> See NYSE Arca AWC No. 2018059263501 dated October 19, 2022, attached as Exhibit 30.

acting-in-concert, also in violation of NYSE Arca Rule 6.6-O.<sup>70</sup> The Firm also violated NYSE Arca Rule 11.18(b) and (c) by failing to maintain a supervisory system and written procedures reasonably designed to ensure compliance with NYSE Arca Rule 6.6-O.<sup>71</sup> The Firm consented to a censure and \$225,000 fine.<sup>72</sup>

I. NYSE Arca, NYSE American, and FINRA Related Actions

Between December 14 and 23, 2021, the Firm entered into AWCs in parallel disciplinary actions brought by NYSE Arca, NYSE American, and FINRA for violations of analogous rules. Each action related to the Firm's over-tendering 270,000 shares in Company A during a partial tender offer in violation of Securities Exchange Act Rule 14e-4 and Cboe Rule 4.2, as well as failing to have a Firm procedure that included a supervisory review for compliance with Rule 14e-4 and Cboe Rules 4.2 and 4.24.<sup>73</sup> The Firm consented to a censure, a combined \$100,000 fine, and \$218,803.52 of disgorgement to be divided amongst the three regulators involved.<sup>74</sup>

J. NYSE Arca, NYSE American, PHLX, and Cboe Related Actions

Between April 15 and May 4, 2021, the Firm entered into AWCs with NYSE Arca, NYSE American, and PHLX, and was the subject of a Cboe decision incorporating a Letter of Consent, for violations of analogous rules. Each action related to the Firm's recording of inaccurate order receipt and entry times for options orders, as well as a failure to reasonably supervise for compliance with applicable recordkeeping rules.<sup>75</sup> The Firm consented to a censure and a combined \$480,000 fine to be divided amongst the four regulators involved, and the Firm agreed to certify that its deficient supervisory procedures have been addressed.<sup>76</sup>

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<sup>70</sup> *Id.* at p. 2.

<sup>71</sup> *Id.* at pp. 2-3.

<sup>72</sup> *Id.* at p. 4. The Firm represents that it paid the fine on November 14, 2022. *See* Exhibit 23 at p. 2.

<sup>73</sup> *See* NYSE Arca AWC No. 2019062945203 dated December 14, 2021; NYSE American AWC No. 2019062945202, dated December 14, 2021; FINRA AWC No. 2019062945201 dated December 23, 2021; CRD Disclosure for Occurrence 2173974, collectively attached as Exhibit 31.

<sup>74</sup> *Id.* at FINRA pp. 3, 11, 20. The Firm paid the fines in connection with these matters. *See* *Id.* at FINRA p. 24; *see also* Exhibit 23 at p. 2.

<sup>75</sup> *See* NYSE Arca AWC No. 2016051325704 dated April 21, 2021; NYSE American AWC No. 2016051325703 dated April 21, 2021; PHLX AWC No. 2016051325702 dated May 4, 2021; Cboe Disciplinary Decision and Letter of Consent, *In re Barclays Capital Inc.*, File No. USE-2301-01 (April 15, 2021); and certifications from the Firm regarding compliance with the undertakings dated June 29, 2021, collectively attached as Exhibit 32.

<sup>76</sup> *Id.* at FINRA pp. 3, 5-6. The Firm certified that the deficiencies were addressed. *Id.* at FINRA pp. 33-38. The Firm represents that it paid the fine to the various regulators on May 13, 2021, June 10, 2021, and May 4, 2021. *See* Exhibit 23 at pp. 2-3.

#### K. SEC Actions and Other Statutory Disqualification Matters

The Firm was also the subject of four SEC orders, which also subjected the Firm to statutory disqualification.

On May 10, 2017, the SEC issued an order finding the Firm willfully violated the Investment Advisers Act of 1940 Sections 206(2), 206(4), 207 and Rule 206(4)-7 thereunder, along with Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 through overcharging its wealth and investment management business clients by nearly \$50 million in advisory fees.<sup>77</sup> The Firm was censured, ordered to cease and desist from committing or causing violations or future violations of the pertinent sections of the Securities Act and the Advisers Act, ordered to pay \$49,785,417 in disgorgement and \$13,752,242 in prejudgment interest to advisory clients, ordered to pay a civil monetary penalty of \$30,000,000, and ordered to pay \$3,504,285 plus interest in remediation.<sup>78</sup>

On May 1, 2017, the SEC issued an order finding that the Firm failed to reasonably supervise traders, within the meaning of Section 15(b)(4)(E) of the Exchange Act, to prevent and detect violations of antifraud provisions of the federal securities laws.<sup>79</sup> The Firm was censured, ordered to pay a civil money penalty of \$1 million, and ordered to pay disgorgement and prejudgment interest in the approximate amount of \$11.71 million.<sup>80</sup> The Firm also agreed to comply with undertakings and to make remedial payments to customers of approximately \$15,561,711.<sup>81</sup>

On February 2, 2016, the SEC issued an order finding that the Firm willfully violated Section 17(a)(2) of the Securities Act of 1933.<sup>82</sup> The matter arose out of the Commission’s Municipalities Continuing Disclosure Cooperation (“MCDC”) Initiative where the Firm

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<sup>77</sup> See SEC Order, *In re Barclays Capital Inc.*, Exchange Act Release No. 80639 (May 10, 2017), attached as Exhibit 33. This order subjects the Firm to statutory disqualification as defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D).

<sup>78</sup> *Id.* at pp. 14-20. FINRA staff confirmed that the Firm complied with all undertakings in connection with the order. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules. *See also* [FINRA Regulatory Notice 09-19](#) (June 15, 2009). As such, a 19h-1 Notice was not filed in connection with this matter.

<sup>79</sup> See SEC Order, *In re Barclays Capital Inc.*, Exchange Act Release No. 80560 (May 1, 2017), attached as Exhibit 34. This order subjects the Firm to statutory disqualification as defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(E).

<sup>80</sup> *Id.* at p. 11.

<sup>81</sup> *Id.* at pp. 8-10. FINRA staff confirmed that the Firm complied with all undertakings in connection with the order. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules.

<sup>82</sup> See SEC Order, *In re Barclays Capital Inc.*, Exchange Act Release No. 77018 (Feb. 2, 2016), attached as Exhibit 35. This order subjects the Firm to statutory disqualification as defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D). The Firm submitted an MC-400A application to FINRA on February 22, 2016. FINRA approved the Firm’s application on March 24, 2016. *See also* *infra* n. 90.

self-reported to the SEC its inadequate due diligence in connection with underwriting certain municipal securities offerings.<sup>83</sup> The Firm was ordered to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, pay a civil penalty of \$500,000, and comply with various undertakings.<sup>84</sup>

On January 31, 2016, the SEC issued an order finding that the Firm willfully violated Section 17(a)(2) of the Securities Act of 1933, Section 15(c)(3) of the Exchange Act, Exchange Act Rules 15c3-5(b) and 15c3-5(c)(i), and Rules 301(b)(2) and 301(b)(10) of Regulation ATS.<sup>85</sup> According to the order, the Firm made materially misleading statements and omitted to state certain material facts to make statements made not misleading to current and prospective subscribers of the Firm's proprietary alternative trading system, Barclays LX.<sup>86</sup> The Firm was censured and ordered to comply with various undertakings, and to pay a \$35,000,000 civil penalty.<sup>87</sup>

## **V. Prior SEA Rule 19h-1 Notices**

FINRA filed two Rule 19h-1 Notices approving Barclays' continued membership notwithstanding the existence of its statutory disqualification.

On March 17, 2021, FINRA filed a Rule 19h-1 Notice approving Barclays' continued membership notwithstanding its statutory disqualification stemming from the January 31, 2016 SEC order discussed above.<sup>88</sup> The Commission acknowledged FINRA's Notice on April 15, 2021.<sup>89</sup>

On March 24, 2016, FINRA filed a Rule 19h-1 Notice approving Barclays' continued membership notwithstanding the existence of its statutory disqualification stemming from the February 2, 2016 SEC order discussed above related to the Commission's MCDC

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<sup>83</sup> See Exhibit 35 at p. 2.

<sup>84</sup> *Id.* at pp. 5-7.

<sup>85</sup> See SEC Order, *In re Barclays Capital Inc.*, Exchange Act Release No. 77001 (Jan. 31, 2016), attached as Exhibit 36. This order subjects the Firm to statutory disqualification as defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D). The Firm submitted an MC-400A application to FINRA on June 20, 2016. FINRA approved the Firm's application on March 17, 2021. See also *infra* n. 88.

<sup>86</sup> See Exhibit 36 at pp. 2-6.

<sup>87</sup> *Id.* at pp. 17-18.

<sup>88</sup> See *In re the Continued Membership of Barclays Capital Inc.*, SD-2119 (FINRA Mar. 17, 2021) and the SEC's Letter of Acknowledgement dated April 15, 2021, collectively attached as Exhibit 37.

<sup>89</sup> *Id.* at FINRA p. 17.

Initiative.<sup>90</sup> The Commission acknowledged FINRA's Notice on April 28, 2016.<sup>91</sup>

## **VI. The Firm's Proposed Continued Membership with FINRA Plan of Heightened Supervision**

The Firm seeks to continue its membership with FINRA notwithstanding its status as a disqualified member. The Firm has agreed to the following Plan of Heightened Supervision ("Supervision Plan" or "Plan") as a condition of its continued membership with FINRA.<sup>92</sup>

Barclays Capital Inc. (the "Firm") is subject to statutory disqualification pursuant to 3(a)(39)(F) of the Securities Exchange Act of 1934, which incorporates by reference Sections 15(b)(4)(D) & (E), as a result of an order issued by the U.S. Securities and Exchange Commission dated September 27, 2022, which found that the Firm willfully violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder. The Order also found that the Firm failed to reasonably supervise its employees within the meaning of Section 15(b)(4)(E).

For the purpose of this Supervision Plan, the term "Digital Communication Channels" means all written electronic methods of communication used to conduct Firm business, including but not limited to, text message platforms, whether via SMS messaging, iMessage, or other messaging services such as WhatsApp; direct messaging platforms including Twitter, Instagram, LinkedIn, Slack, or Bloomberg Messaging; non-firm domain email accounts; and any other written electronic business-related correspondence. "Digital Communication Channels" encompass platforms used to exchange messages with internal or external stakeholders using either a personal or Firm-provided device.

For the purpose of this Supervision Plan, the term "Off-Channel Communications" means all business-related written electronic messages sent on Digital Communication Channels that are not captured by Firm surveillance and record-keeping systems.

In consenting to this Supervision Plan, the Firm agrees to the following:

1. The Firm shall comply with all of the undertakings outlined in the Securities and Exchange Commission ("SEC" or "Commission") Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21(C) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, *In the Matter of Barclays Capital Inc.*,

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<sup>90</sup> See *In re the Continued Membership of Barclays Capital Inc. et al.*, SD-MCDC-059, SD-MCDC-055, SD-MCDC-064 (FINRA Mar. 24, 2016) and the SEC's Letter of Acknowledgement dated April 28, 2016, collectively attached as Exhibit 38.

<sup>91</sup> *Id.* at FINRA p. 6.

<sup>92</sup> See Executed Consent to Plan of Heightened Supervision dated September 14, 2023, attached as Exhibit 39.

Exchange Act Release No. 95919 (September 27, 2022) (“SEC Order”).

2. The Firm shall maintain copies of all correspondence between the Firm and Commission staff relating to the SEC Order, including documenting when Commission staff grants extensions to the deadlines set forth in the SEC Order. The Firm shall maintain copies of all such correspondence in a segregated file for ease of review by FINRA staff.
3. The Firm shall provide FINRA’s Statutory Disqualification Group with copies of all certifications submitted to the SEC upon completion of the undertakings as specified in the SEC Order. The Firm shall also maintain copies of all certifications in a segregated file for ease of review by FINRA staff.
4. The Firm shall maintain copies of all reports and supporting documentation submitted to SEC staff in accordance with the SEC Order, as well as any other documentation needed to evidence the status and completion of each of the undertakings outlined in the SEC Order. The Firm shall maintain copies of such documentation in a segregated file for ease of review by FINRA staff.
5. Within six months of the SEC’s Letter of Acknowledgement in this matter (“LOA”), to the extent that it has not already done so within the past six months, and on at least an annual basis thereafter, for a term of six years from the date of the LOA, the Firm shall conduct training for all associated persons regarding the Digital Communication Channels that the Firm has approved for business communication, along with the Firm’s current policies regarding retention of business-related electronic communications. The Firm shall maintain a record of individual completion of said training and a copy of said training materials in a readily accessible place for ease of review by FINRA staff.
6. The Firm shall conduct the training described in item number 5 above for all new hires, within sixty-five days from the date of commencement of new hire training, for a term of six years from the date of the LOA. The Firm shall retain a record of all new hire training, including a copy of all written training materials, and keep said record(s) in a readily accessible place for ease of review by FINRA staff.
7. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, establish and maintain a written list(s) of all Digital Communication Channels that its associated persons are permitted to use to communicate about Firm business. The list(s) shall be circulated to all of the Firm’s associated persons at least on a semi-annual basis, for a term of six years from the date of the LOA. The Firm shall require that all associated persons obtain written approval for use of any Digital Communication Channels to communicate about Firm business that are not already on the approved list(s) maintained by the Firm. The Firm shall maintain a record of all requests and approvals or rejections of each request, including the date of the requests and the Firm’s decision. The Firm shall maintain copies of such requests and decisions in a readily accessible place for ease of review by FINRA staff.

8. The Firm shall require all associated persons to disclose on at least a semi-annual basis, for a term of six years from the date of the LOA, any unapproved Digital Communication Channels he/she is using to communicate about Firm business. The Firm shall retain records of such disclosures in a readily accessible place for ease of review by FINRA staff.
9. Subject to Paragraph 7 above, the Firm shall prohibit associated persons from using Off-Channel Communications.
10. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, develop a process whereby, in the event that an associated person sends or receives an Off-Channel Communication, the Off-Channel Communication is submitted to the Firm and retained in compliance with relevant securities laws and regulations. For a term of six years from the date of the LOA, the Firm shall maintain a record of all such Off-Channel Communications, including a record of the Firm's receipt of the communication, in a readily accessible place for ease of review by FINRA staff.
11. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, develop and maintain written supervisory policies and procedures detailing the Firm's process for disciplining associated persons who utilize Off-Channel Communications to communicate about Firm business. When the Firm utilizes the disciplinary process, the Firm shall document each instance. The Firm shall retain records of such written supervisory policies and procedures and records of the disciplinary processes and each outcome.
12. All requested documents and certifications under this Supervision Plan shall be sent directly to FINRA's Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).
13. The Firm shall obtain written approval from FINRA's Statutory Disqualification Group prior to changing any provision of the Supervision Plan.
14. The Firm shall submit any proposed changes or other requested information under this Supervision Plan to FINRA's Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).

## **VII. Discussion**

After carefully reviewing the entire record in this matter, FINRA approves the Firm's request to continue its membership with FINRA, subject to the terms and conditions set forth herein. In evaluating Barclays' Application, FINRA assessed whether the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. *See* FINRA By-Laws, Art. III, Sec. 3(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily disqualified individual

if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Typically, factors that bear on FINRA's assessment include, among other things, the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the Firm's regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, FINRA has determined that the Firm's continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. While the SEC Order identified serious violations of securities laws, the Firm was not expelled or suspended, nor were any limitations placed on Barclays' securities activities. Although the SEC Order triggered certain disqualifications from exemptions from registration available under the Securities Act of 1933 ("Securities Act"), specifically Regulations A, D and E of the Securities Act and Regulation Crowdfunding, the SEC granted the Firm a waiver from the application of the disqualification provisions of Rules 262(a)(4)(ii), 506(d)(1)(iv)(B), and 602(c)(3) of the Securities Act and Rule 503(a)(4)(ii) of Regulation Crowdfunding. Moreover, the full amount of the civil monetary penalty was promptly paid and the Firm promptly paid the sums owed to the CFTC based on an order with similar findings as the disqualifying one. Additionally, the Firm represented that it is in compliance with the ordered undertakings.

Member Supervision also acknowledges that within the SEC Order the Commission considered the Firm's prompt remedial actions and cooperation with the Commission when determining to accept the Offer of Settlement. Specifically, the Commission acknowledged that Barclays enhanced its policies and procedures, increased training concerning the use of approved communications methods including on personal devices, and began implementing significant changes to the technology available to employees.<sup>93</sup>

It is well settled that a firm's regulatory history bears upon the assessment of its ability to comply with securities law and regulations. *See In the Matter of the Continued Association of Craig Scott Taddonio with Meyers Associate, L.P.*, SD-2117, slip op. at 24-25 (FINRA NAC March 8, 2017). However, the corrective measures taken by firms to address deficiencies are weighed in determining whether to approve applications. *See In the Matter of the Association of X with the Sponsoring Firm*, SD11007 (FINRA NAC 2011) (where a firm's corrective actions negated Member Regulation's assertion that the firm failed to appreciate or respect securities rules and regulations). FINRA has also previously approved applications for continued membership where the firms had extensive regulatory history, including disqualifying events. *See In the Matter of the Continued Membership of Deutsche Bank Securities, Inc.*, SD-2190 (FINRA Jan. 14, 2020) and *In the Matter of the Continued Membership of Citigroup Global Markets, Inc.*, SD-2082 (FINRA May 2, 2017) (approving continued membership where the firms had extensive regulatory history, including recent disqualifying events).

In its evaluation of the Firm's Application, FINRA acknowledges the Firm's recent regulatory and disciplinary history, including its additional statutory disqualifying events.

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<sup>93</sup> *See Exhibit 2 at p. 6.*

Member Supervision also notes that, as of the date of this Notice, the Firm has paid all fines and complied with all undertakings ordered by regulators. None of these matters would prevent the continuance of the Firm as a FINRA member. With respect to the Firm's recent examination exceptions, the Firm took multiple steps to resolve the deficiencies, including updating its technology, improving its processes and procedures, updating their conflicts of interest disclosure documents, and implementing additional reviews, reconciliations, and surveillance controls in order to resolve several different issues with inaccurate, incomplete, or untimely reporting of trade data.

FINRA is further reassured by the controls set in place by the Firm's Supervision Plan which bolster the undertakings outlined in the SEC Order and will continue to provide oversight of the Firm and compliance with its remaining undertakings. In accordance with the Plan, the Firm agreed to conduct annual training for all associated persons, including new hires, regarding the Firm's approved digital communication methods and record retention policies for electronic communications. Further, the Plan calls for the Firm to maintain a list of approved digital communication methods that associated persons are permitted to use for Firm business and to circulate that list to its associated persons semi-annually. The Plan requires the Firm's associated persons to obtain written approval to use digital communication channels not already approved. The Plan prohibits the use of off-channel communications and requires associated persons to semi-annually disclose any unapproved digital communication methods they are using for Firm business; they must also forward any off-channel communications that may have taken place to the Firm for retention purposes. These provisions will help to ensure that the Firm is aware of the communication methods being used by associated persons so that it can appropriately monitor, capture, and retain those communications. Additionally, the Plan mandates that the Firm develop policies and procedures for disciplining associated persons who use unapproved communication methods for Firm business and segregate all certifications, reports, and supporting documentation submitted to the SEC regarding compliance with the undertakings, for ease of review by FINRA staff to ensure ongoing compliance.

The Department is further reassured by the progress the Firm has made on the undertakings required by the SEC. Specifically, the Firm retained a compliance consultant, and that consultant has completed its comprehensive review of Barclays' policies, procedures, and training related to the use and preservation of electronic communications.<sup>94</sup> In addition, the compliance consultant submitted a written report of its findings to SEC Staff.<sup>95</sup> The Firm has also provided the SEC Staff with updates regarding any disciplinary actions taken at the Firm related to potential violations of its policies and procedures regarding preservation of electronic communications.<sup>96</sup>

Following the approval of the Firm's continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule

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<sup>94</sup> See Exhibit 23 at p. 1.

<sup>95</sup> See Exhibit 24.

<sup>96</sup> *Id.*

9523.

Thus, FINRA is satisfied, based on the foregoing and on the Firm's representations made pursuant to the Supervision Plan, that the Firm's continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, FINRA approves Barclays' Application to continue its membership with FINRA.

FINRA certifies that the Firm meets all qualification requirements and represents that the Firm is registered with several other SROs including BOX, Cboe, BYX, BZX, EDGA, EDGX, C2, IEX, LTSE, MEMX, MIAX, MIAX Emerald, MIAX Pearl, NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National, BX, GEMX, ISE, MRX, Nasdaq, NOM, PHLX, DTC, NSCC, FICC-Gov, and FICC-MBS. The SROs have been provided with the terms and conditions of Barclays' proposed continued membership, and they concur with FINRA.

In conformity with the provisions of Rule 19h-1 of the Exchange Act, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the SEC.

On Behalf of FINRA,



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Marcia E. Asquith  
Executive Vice President & Corporate Secretary

EXHIBITS  
SD-2343

1. MC-400A Application and related attachments compiled by CRED, with a cover memorandum dated October 27, 2022.
2. SEC Order, *In re Barclays Capital Inc.*, Exchange Act Release No. 95919 (Sept. 27, 2022).
3. *In re Certain Broker-Dealer Practices*, Securities Act Release No. 11109 (Sept. 27, 2022).
4. CRD Excerpt: Types of Business.
5. CRD Excerpt: Organization Registration Status.
6. Disposition Letter for Examination No. 20150442272 dated June 29, 2022.
7. Disposition Letter for Examination No. 20200651016 dated April 12, 2022, Examination Report dated August 31, 2021, and Firm Response dated September 24, 2021.
8. Disposition Letter for Examination No. 20190606442 dated October 13, 2021.
9. Disposition Letter for Examination No. 20190641455 dated September 12, 2023, Cautionary Action Letter Supplement (undated), and Firm Response dated October 3, 2023.
10. Disposition Letter and Examination Report for Examination No. 20220761528 dated May 18, 2023.
11. Disposition Letter for Examination No. 20200663335 dated September 15, 2022.
12. Disposition Letter for Examination No. 20210708056 dated August 30, 2022 and Firm Response dated September 20, 2022.
13. Disposition Letter for Examination No. 20200673255 dated December 22, 2021 and Firm Response dated February 1, 2022.
14. Disposition Letter for Examination No. 20190633243 dated October 15, 2021 and Firm Response dated November 19, 2021.
15. SEC Examination Letter for File No. 8-41342 dated May 20, 2022 and Firm Response dated June 17, 2022.

16. FINRA AWC No. 2019061076001 dated April 18, 2023 and CRD Disclosure for Occurrence 2269007.
17. FINRA AWC No. 2019061298301 dated November 21, 2022 and CRD Disclosure for Occurrence 2242431.
18. FINRA AWC No. 2014041808601 dated October 4, 2022 and CRD Disclosure for Occurrence 2232234.
19. FINRA AWC No. 2015044227201 dated June 29, 2022, CRD Disclosure for Occurrence 2213046, and Certification of Compliance with Undertakings dated November 8, 2022.
20. FINRA AWC No. 2019063248401 dated February 24, 2022 and CRD Disclosure for Occurrence 2185151.
21. FINRA AWC No. 2017054054501 dated December 1, 2020, CRD Disclosure for Occurrence 2098775, and Certification Letters from the Firm regarding compliance with the required undertakings.
22. CFTC Order, *In re Barclays Bank PLC and Barclays Capital Inc.*, CFTC Docket No. 22-39 (Sept. 27, 2022).
23. Correspondence from Wilmerhale to FINRA dated January 23, 2023, excluding attachments.
24. Correspondence from Wilmerhale to FINRA dated June 20, 2023.
25. Cboe Disciplinary Decision and Letter of Consent, *In re Barclays Capital Inc.*, File No. USRI-9538-01 (Dec. 22, 2021).
26. Cboe Disciplinary Decision and Letter of Consent, *In re Barclays Capital Inc.*, File No. USE-2202-01 (Oct. 13, 2021), and C2 Disciplinary Decision and Letter of Consent, *In re Barclays Capital Inc.*, File No. USE-2202-02 (Oct. 13, 2021).
27. ICE Notice of Violation of Rule 404(b) to Barclays Capital Inc., ICE Matter No. 2020-404b-024, dated January 5, 2021.
28. NYSE AWC Nos. 2019-12-00042 & 2019-07-00026 dated November 2, 2020.
29. NYSE American AWC No. 2019-12-00043 dated November 11, 2021.
30. NYSE Arca AWC No. 2018059263501 dated October 19, 2022.

31. NYSE Arca AWC No. 2019062945203 dated December 14, 2021; NYSE American AWC No. 2019062945202 dated December 14, 2021; FINRA AWC No. 2019062945201 dated December 23, 2021; CRD Disclosure for Occurrence 2173974.
32. NYSE Arca AWC No. 2016051325704, dated April 21, 2021; NYSE American AWC No. 2016051325703, dated April 21, 2021; PHLX AWC No. 2016051325702 dated May 4, 2021; Cboe Disciplinary Decision and Letter of Consent, *In re Barclays Capital Inc.*, File No. USE-2301-01 (April 15, 2021); and certifications from the Firm regarding compliance with the undertakings dated June 29, 2021.
33. SEC Order, *In re Barclays Capital Inc.*, Exchange Act Release No. 80639 (May 10, 2017).
34. SEC Order, *In re Barclays Capital Inc.*, Exchange Act Release No. 80560 (May 1, 2017).
35. SEC Order, *In re Barclays Capital Inc.*, Exchange Act Release No. 77018 (Feb. 2, 2016).
36. SEC Order, *In re Barclays Capital Inc.*, Exchange Act Release No. 77001 (Jan. 31, 2016).
37. *In re the Continued Membership of Barclays Capital Inc.*, SD-2119 (FINRA Mar. 17, 2021) and the SEC's Letter of Acknowledgement dated April 15, 2021.
38. *In re the Continued Membership of Barclays Capital Inc. et al.*, SD-MCDC-059, SD-MCDC-055, SD-MCDC-064 (FINRA Mar. 24, 2016) and the SEC's Letter of Acknowledgement dated April 28, 2016.
39. Executed Consent to Plan of Heightened Supervision dated September 14, 2023.

## Exhibit A

### Plan of Heightened Supervision

Barclays Capital Inc. (the “Firm”) is subject to statutory disqualification pursuant to Section 3(a)(39)(F) of the Securities Exchange Act of 1934, which incorporates by reference Sections 15(b)(4)(D) & (E), as a result of an order issued by the U.S. Securities and Exchange Commission (“SEC” or “Commission”) dated September 27, 2022, which found that the Firm willfully violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder (“SEC Order”). The SEC Order also found that the Firm failed reasonably to supervise its employees within the meaning of Section 15(b)(4)(E).

In consenting to this Supervision Plan<sup>1</sup> (“Supervision Plan”), the Firm agrees to the following:

1. The Firm shall comply with all the undertakings outlined in the SEC Order.
2. The Firm shall maintain copies of all correspondence between the Firm and Commission staff relating to the SEC Order, including documenting when Commission staff grants extensions to the deadlines set forth in the SEC Order. The Firm shall maintain copies of all such correspondence in a readily accessible place for ease of review by FINRA staff.
3. The Firm shall maintain copies of all reports and supporting documentation submitted to SEC staff in accordance with the SEC Order, as well as any other documentation needed to evidence the status and completion of each of the undertakings outlined in the SEC Order. The Firm shall maintain copies of such documentation in a readily accessible place for ease of review by FINRA staff.
4. The Firm shall provide FINRA’s Statutory Disqualification Group with copies of all certifications submitted to the SEC upon completion of the undertakings as specified under paragraph 35 of the SEC Order.
5. This Supervision Plan shall take effect on the date the Firm executes its consent to this Supervision Plan. The Supervision Plan shall be in effect until FINRA’s receipt of the Firm’s final certifications required by the SEC Order, after which time the Supervision Plan and its provisions thereto will expire.
6. All requested documents and certifications under this Supervision Plan shall be sent directly to FINRA’s Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).
7. The Firm shall obtain written approval from FINRA’s Statutory Disqualification Group prior to changing any provision of the Supervision Plan.
8. The Firm shall submit any proposed changes or other requested information under this Supervision Plan to FINRA’s Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).

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<sup>1</sup> This Supervision Plan supersedes the Firm’s previous Supervision Plan executed on September 14, 2023.