

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

In the Matter of

BARCLAYS BANK PLC,
BARCLAYS BANK PLC, NEW YORK BRANCH

**CONSENT ORDER UNDER
NEW YORK BANKING LAW § 44**

The New York State Department of Financial Services (the “Department”), Barclays Bank PLC, and Barclays Bank PLC, New York Branch (collectively, “the Parties”) stipulate that:

WHEREAS Barclays Bank PLC is a major international banking institution with more than 132,000 employees and total assets exceeding \$2 trillion;

WHEREAS Barclays Bank PLC has operated a foreign bank branch in New York State (“the New York Branch”), licensed, supervised and regulated by the Department since 1963;

WHEREAS the New York Branch has more than 500 employees and total assets exceeding \$36 billion;

WHEREAS the Department and Barclays Bank PLC and its New York Branch (collectively, “Barclays” or the “Bank”) entered into a May 20, 2015 Consent Order pursuant to which Barclays admitted it had engaged in certain misconduct regarding the trading of benchmark foreign exchange (“FX”) rates from at least 2008 through 2012 in violation of the New York Banking Law and other laws (the “May 2015 Order”);

WHEREAS the May 2015 Order did not release Barclays from any claims concerning FX trading electronic systems, electronic trading of FX and FX-related products, or any related activities;

WHEREAS the Bank operates an electronic trading platform for the foreign exchange market, called BARX, which allows traders to execute FX trades with Barclays;

WHEREAS some trades on BARX are subject to Last Look, an automated function that delays the Bank's response to a counterparty's incoming client orders for a set period of time — called the "hold time" — and rejects the order if the market price moves beyond a certain threshold during the hold time;

WHEREAS from at least 2009 through 2014, Barclays engaged in certain practices involving the imposition of "Last Look" on client orders, which Barclays states was intended to be used as a defense to protect the Bank against trading on stale prices, as well as from "latency arbitrage" and other toxic trading practices in FX trading;

WHEREAS Barclays failed to properly use Last Look due to the failure of systems and controls, including management oversight;

WHEREAS Barclays employed its Last Look order holding and rejection protocols broadly and indiscriminately, without first verifying if latency or arbitrage was involved;

WHEREAS there was a lack of transparency both internally and with customers regarding Last Look; and

WHEREAS in certain instances, information provided to customers and/or the Barclays sales team concerning Last Look was insufficient and/or incomplete;

NOW THEREFORE, to resolve this matter without further proceedings pursuant to the Superintendent's authority under Section 44 of the Banking Law, the Department and Barclays agree to the following:

FACTUAL BACKGROUND

FX Electronic Trading; Latency Arbitrage and Defensive Last Look

1. Barclays is a “market maker” in the foreign currency markets. It provides liquidity in these markets by selling currencies to those who wish to buy them and buying currencies from those who wish to sell.
2. Because Barclays will generally agree to one side of a foreign currency exchange without identifying a perfectly simultaneous, offsetting order on the other side, the Bank assumes risk in its role as a market maker.
3. As a market maker, and to compensate for this assumption of risk, Barclays establishes a “bid-ask” spread on its activity; it adds a small percentage to the prices it offers so that it may buy for less than it sells and sell for more than it buys with a profit margin commensurate with the risk it assumes.
4. While FX trading, like other trading activity, was historically conducted and/or confirmed via human-to-human communications, including by “voice” trading over telephone, some 80% of Barclays’s FX trading volume is now conducted solely electronically, on Barclays’s electronic trading platform, known as BARX.
5. Barclays’s FX electronic trading clients fall into two broad categories: (1) clients that trade using a Barclays graphical user interface (“GUI”); and (2) clients that trade using a Barclays financial information exchange application program interface (“FIX/API”).
6. The ever-increasing power of sophisticated automated electronic trading systems and technologies creates opportunities for investment entities, which might be able to exploit latencies in the flow of information by requesting trades at prices informed by information that Barclays and other market makers might not yet have. Orders of this kind, which seek to

outflank and exploit a market maker's less nimble trading systems, are known as "toxic order flow" or "toxic flow."

7. For example, a sophisticated electronic trading business might detect market movement some milliseconds ($1/1,000^{\text{th}}$ of a second) before Barclays's systems have, and therefore benefit by trading with Barclays before Barclays's systems have properly adjusted their prices. Similarly, a sophisticated client could obtain a better price by breaking up and spreading fractions of its total order volume across a number of market makers. A market maker would then execute this apparently low volume trade at a lower price than it would have had it been aware of the total size of the customer's order in the market place, because lower volume orders have a lesser impact upon the market and require market makers to assume less risk. This practice, known as "spraying the market" is another example of the kind of "toxic flow" that concerned Barclays.

8. In order to protect Barclays from toxic flow, Barclays designed Last Look, which imposed a hold period between its receipt of a customer order and its acceptance and execution of the same. During this interval, Barclays would compare the BARX price of the customer's order at the start of the hold time against the BARX price at the end of the hold time; where the price at the end of the hold time had moved against Barclays (and in favor of the client) beyond the threshold set by Barclays in the tens and hundreds of milliseconds following the order, Barclays would reject the trade.

Barclays's Use of Last Look Was Overbroad

9. Barclays did not seek to distinguish toxic order flow from instances in which prices merely happened to move in favor of the customer and against Barclays after the customer's order was entered on Barclays's systems.

10. Barclays instead applied Last Look to *all* API/FIX trades, as well as a handful of GUI customers.

11. From 2009 to 2014, a large number of the trades Barclays rejected were not truly examples of latency arbitrage or other toxic order flow.

12. Barclays's systems assumed the use of the API/FIX system was itself a clear indication of customers' ability to engage in latency arbitrage and create toxic flow. Thus, all customers routing orders through such platforms were assigned an undisclosed latency or "hold" time before their trades were executed.

13. Whenever prices within this holding period moved against Barclays and in favor of the customer beyond a certain undisclosed loss threshold, Barclays treated the trade as toxic flow.

14. Barclays thereby evaluated and applied its Last Look rejection protocols almost entirely in reference to the profit or loss the trade would bring to the Bank.

15. Barclays did not perform an analysis to ensure Last Look was limiting its rejections to trades that in fact reflected "latency arbitrage" or other truly "toxic" flow.

16. Thus, instead of employing Last Look as a purely defensive measure, Barclays instead used it as a general filter to reject customer orders that Barclays predicted, based on price movements during the hold period, would be unprofitable to the Bank.

17. After the commencement of the Department's FX trading investigation, Barclays revised Last Look, in September and October 2014, so that its rejection filters would operate symmetrically. That is, rather than reject only those orders that became sufficiently unprofitable to the *Bank*, trade requests sufficiently unprofitable to *customers* (but profitable to the Bank) would also be rejected.

18. In executing these revisions to make Last Look symmetrical, Barclays neglected to update one of its trading platforms, causing 7% of its trading volume to continue under the asymmetrical paradigm until August 2015. Barclays has since updated all trading platforms.

Application of Last Look to Stop Orders

19. Barclays also applied protocols similar to Last Look to hold customer orders that had been entered as “stop loss” or “stop limit” orders.

20. Stop orders are designed and understood across financial markets as a type of predetermined, risk-reducing trade. A customer determines in advance that a trade should be made once a market price reaches the predefined “trigger,” and enters an order triggered at that price, which remains on the market maker’s order book until such time as that price is reached. At that time, and depending on the type of order entered, the market maker will either attempt to execute a trade either at the specific pre-set stop limit (taking the risk no trade will occur if the market price quickly moves away from that pre-set price) or else execute a trade at whatever price it can achieve the instant after the stop loss trigger price was reached.

21. Barclays applied protocols similar to Last Look to standing stop loss orders, delaying the execution of these preexisting customer orders.

22. In addition, stop loss orders could be subject to multiple Last Look holds, if price movements during each hold period exceeded the threshold in place by the end of each hold period.

Barclays Exhibited a Lack of Transparency about Last Look with Customers and Its Own Sales Team

23. On certain occasions, from at least 2009 to 2014, certain Barclays employees provided insufficient and/or incomplete information to its customers about its use of Last Look.

24. Barclays did not disclose the reasons for not accepting trades in its post-trade reporting to clients. Instead, the client would receive a simple rejection message: “NACK,” which stood for “Not Acknowledged.”

25. In certain instances, when clients received a NACK message and questioned Barclays about it, Barclays failed to disclose the reason that trades were rejected, instead citing technical issues or providing vague responses:

- a. On October 10, 2008, a New York Barclays Client Services employee announced the release of Last Look, emphasizing that it “gives traders the ability to configure a profit check.” The employee continued, “GUI clients will get a pop up for any of the[] rejects stating ‘trade rejected due to latency.’ FIX clients will get a FIX reject message. IF any client does call up about a rejected trade . . . it is important that you state in any communication ‘THE TRADE WAS REJECTED BECAUSE OF LATENCY.’ . . . DO NOT talk about P&L on trades.”
- b. On December 15, 2010, a Barclays client wrote, “[w]e have noticed that there were over 300 rejected orders with you today and the reason is ‘NACK’, could you pls have a look at them and advise what’s causing it?” After failing to receive a substantive response, the client followed up two days later, writing, “[w]e have not heard anything back with regards to the rejections. And this has become quite a serious matter. . . . We kept receiving top of the book rates from you and hitting your rate, but we got rejected by you 9 times out of 10 where we could have been well filled by other liquidity providers who have been providing competitive rates. . . . Could someone from your side shed some lights on the rejections? Whether they are due to technical difficulties or business decisions?” There is no evidence that Barclays ever responded to these queries.
- c. On September 28, 2011, after several days had passed since a Barclays client had asked whether a trade rejection was due to Barclays’s “price engine experienc[ing] delays or is it the result of an extreme market event/movement,” Barclays staff directed a Sales employee, “because the client didn’t chase us for an answer on the below last look rejection since Monday we have decided to park it for now and in case the client comes back, [another Barclays employee] will explain that the rejection was due to the market [sic] large volatility.”

- d. On February 25, 2013, after inadvertently providing a Barclays client with the rejection message “AntEconomic failed by failing check,” a Barclays Sales employee directed that “We should revert to naming ALL REJECTS the same NACK urgently . . . Clients are gonna come asking.”
- e. On August 27, 2013, a support employee of an ECN noted “Barclays is frequently rejecting executions on the last available quote or sending rejection messages without a clear reason.” In the same email chain, Barclays employees suggested explaining to the ECN “what last look is.”
- f. On October 10, 2013, after a Barclays client questioned the reason for an “unusual amount of rejected orders” caused by Last Look, a BARX support employee familiar with Last Look wrote to the relevant Sales employee, “Would you like to go back to [the client] and tactfully explain? [BARX Support] cannot confirm or deny the existence of last look.”
- g. On September 4, 2014, when a Barclays Sales employee emailed a BARX Support employee, the employee responded by describing Last Look as a “pricing check setup against BARX clients” to “ensure profitability of a trade for Barclays,” but emphasized that “Our Team generally does not share this info with the client, and just say it was a business reject.”

26. Some sophisticated customers monitored their rejection rates and turnaround times at Barclays and other banks. On certain occasions, some of these sophisticated customers raised concerns about their high rejection rates at Barclays. Upon such complaints, Barclays engaged in discussions with customers concerning their rejection rates, and sometimes adjusted hold times and thresholds to decrease rejection rates.

27. In a marketing presentation for the BARX GUI circulated to a variety of clients, Barclays stated: “No last look — what you see is what you get.” This presentation did not explicitly distinguish GUI from the FIX/API platform, nor did it explain that Last Look did apply to FIX/API client orders.

28. Certain senior Barclays employees instructed traders and IT employees not to inform the Barclays Sales team about the existence of Last Look:

- a. On June 6, 2011, in an email discussion about Last Look, a Barclays Managing Director and Head of Automated Electronic FX Trading wrote: “Do not involve Sales in anyway [sic] whatsoever. In fact avoid mentioning the existence of the whole BATS Last Look functionality. If you get enquiries just obfuscate and stonewall.”
- b. On August 4, 2011, a Barclays employee wrote to a trader: “for the future, sales absolutely 100% do not know about the existence of last look and it shouldn’t be a concern for them.”
- c. On November 7, 2011, the Barclays Managing Director and Head of Automated Electronic FX Trading wrote: “Do not discuss Last Look with Sales. If there has been a spurt [in rejected trades] just blame it on the weekend IT release and say it’s being fixed.”

VIOLATIONS OF LAW AND REGULATIONS

29. With regards to the aforementioned conduct, the Bank has conducted banking business in an unsafe and unsound manner.

SETTLEMENT PROVISIONS

Monetary Penalty

30. Barclays shall pay a civil monetary penalty, pursuant to Banking Law § 44, to the Department in the amount of \$150,000,000. Barclays shall pay the entire amount within ten days of executing this Consent Order. Barclays agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

Employee Discipline

31. A Barclays Managing Director and Global Head of Electronic Fixed Income, Currencies, and Commodities (“eFICC”) Automated Flow Trading has been suspended but remains employed by the Bank. The Department orders the Bank to take all steps necessary to terminate this individual, who played a role in the misconduct discussed in this Consent Order.

32. After the commencement of the Department's FX trading investigation, the Global Head of eFICC Trading was terminated.

33. If a judicial or regulatory determination or order is issued finding that the termination of any of the above employees is not permissible under local law, then such employees nevertheless shall not be allowed to hold or assume any duties, responsibilities, or activities involving compliance, FX benchmarks, or any matter relating to U.S. or U.S. Dollar operations.

Independent Monitor

34. Pursuant to a July 25, 2014 Memorandum of Understanding, the Department installed a Monitor at Barclays. Following the execution of this Consent Order, the Monitor will work with Barclays solely on remediation plans concerning the conduct referenced both in this Consent Order and in the May 2015 Order, and will terminate its engagement on February 19, 2016.

35. By December 15, 2015, Barclays will provide the Monitor with a proposed remediation plan concerning the conduct referenced both in this Consent Order and in the May 2015 Order. The plan shall include an overview on:

- a. Barclays's review of the effectiveness of the Bank's policies and procedures pertaining to FX trading, including FX trading electronic systems and electronic trading of FX (including FX derivatives), and implementation of improved policies, procedures, and oversight;
- b. Barclays's plan for designing and implementing change management procedures for FX trading electronic systems, which include a Compliance approval process and a formalized set of criteria for making changes, and improving testing and oversight; and

- c. Implementing supervisory procedures requiring periodic review of FX trading electronic systems settings, and changes thereto, to ensure compliance with documented procedures and principles.

Breach of Consent Order

36. In the event that the Department believes Barclays to be in material breach of the Consent Order, the Department will provide written notice to Barclays and Barclays must, within ten business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

37. The parties understand and agree that Barclays's failure to make the required showing within the designated time period shall be presumptive evidence of Barclays's breach. Upon a finding that Barclays has breached this Consent Order, the Department has all the remedies available to it under New York Banking and Financial Services Law and may use any evidence available to the Department in any ensuing hearings, notices or orders.

Waiver of Rights

38. The Parties understand and agree that no provision of this Consent Order is subject to review in any court or tribunal outside the Department.

Parties Bound by the Consent Order

39. This Consent Order is binding on the Department and Barclays, as well as any successors and assigns that are under the Department's supervisory authority. But this Consent Order does not bind any federal or other state agency or any law enforcement authority.

40. No further action will be taken by the Department against Barclays for the conduct set forth in the Consent Order or claims concerning FX trading electronic systems and

electronic trading of FX (including FX derivatives), provided that Barclays complies with the terms of the Consent Order.

41. Notwithstanding any other provision in this Consent Order, however, the Department may undertake additional action against Barclays for transactions or conduct that Barclays did not disclose to the Department in the written materials Barclays submitted to the Department or the Monitor in connection with this matter.

Notices

42. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

Daniel Sangeap
Director and Deputy Counsel
Capital Markets Division
One State Street
New York, NY 10004

For Barclays Bank PLC:

Lawrence Dickinson
Company Secretary
1 Churchill Place
London, E14 5HP
United Kingdom

Miscellaneous

43. Each provision of this Consent Order shall remain effective and enforceable until stayed, modified, suspended or terminated by the Department.

44. No promise, assurance, representation or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of the Consent Order.

45. The Department has agreed to the terms of this Consent Order based on, among other things, the representations made to the Department by Barclays either directly or through its counsel and the Department's own factual investigation. To the extent that representations made by Barclays either directly or through their counsel are later found to be materially incomplete or inaccurate, this Consent Order is voidable by the Department in its sole discretion.

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this

17 day of November, 2015.

BARCLAYS BANK PLC

By: 

ROBERT F. HOYT
Group General Counsel

NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES

By: 

ANTHONY J. ALBANESE
Acting Superintendent of Financial Services