

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK :
By ERIC T. SCHNEIDERMAN, Attorney General of :
the State of New York, :
 : Index No.: 451391/2014
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Plaintiff, :
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- against - : **AMENDED COMPLAINT**
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BARCLAYS CAPITAL, INC., and :
BARCLAYS PLC, :
 :
 :
Defendants. :
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Plaintiff, the People of the State of New York, by Eric T. Schneiderman, Attorney General of the State of New York (the “Attorney General”), alleges the following against Barclays Capital, Inc. and Barclays PLC (together, “Barclays”):

PRELIMINARY STATEMENT

1. This is a case about fraud and deceit by one of the world’s largest banks. Barclays operates in fifty countries with particularly large business operations in New York and London. The facts in this case concern a major business division in Barclays’ New York office, the Equities Electronic Trading Division.
2. The Attorney General stands behind all of the allegations in the initial Complaint filed on June 25, 2014. The Attorney General’s ongoing investigation has uncovered significant additional wrongdoing by Barclays, as set forth in this Amended Complaint. This Amended Complaint also includes further details relating to the allegations set forth in the initial Complaint.

3. Beginning in 2011 and continuing at least until the filing of the initial Complaint in this action, Barclays engaged in a broad effort to deceive clients and the investing public about how, and for whose benefit, Barclays operated its electronic trading services.

4. In 2011, Barclays' Equities Electronic Trading Division embarked on a business plan to dramatically increase the revenues and market share of its three core, interrelated products and services: (i) algorithmic trading services; (ii) smart order routing services; and (iii) a private securities trading venue known as a "dark pool." Each of those relates directly to the trading of securities. Barclays' business plan involved convincing clients and potential clients – many of whom were institutional investors managing the accounts of individual investors – to send orders for equities securities to Barclays, which Barclays would then handle as a broker. In written documents delivered to investors, marketing materials posted on Barclays' public website, in-person meetings with clients and potential clients, and through a variety of other interactions, Barclays represented to clients and potential clients that it would offer "End-to-End Client Protection" from "aggressive," "predatory," and "toxic" high frequency traders.¹

5. Barclays represented that allowing it to control client trades from start to finish would (i) increase the rates at which those orders were filled; (ii) decrease the likelihood that prices would move against clients; and (iii) minimize the likelihood that high frequency traders would act as counterparties. In short, Barclays represented that its electronic trading services and products would have a positive impact on the likelihood that client orders would be filled and would have a positive impact on the prices at which those client orders would be executed.

Those are core aspects of any securities transaction.

¹ The descriptive terms used in this Amended Complaint to categorize high frequency trading, including "aggressive," "predatory," or "toxic" are all taken from Barclays' own statements to clients, potential clients, and the investing public.

6. Barclays' representations were contrary to what Barclays was, in fact, doing with client orders. In fact, Barclays operated its electronic trading services in its own interests and at the expense of its clients by funneling as many orders as possible to Barclays' own dark pool, knowing that those orders were exposed to the aggressive or predatory high frequency traders that Barclays claimed it was protecting its clients from.

7. As discussed in further detail below, Barclays' wrongdoing includes the following:

a) Barclays falsely represented that its trading algorithms made decisions based on "real time market information" that was not biased in favor of any particular trading venue. In truth, and undisclosed to investors, Barclays intentionally programmed its trading algorithms to "prefer" its own dark pool, resulting in disproportionate numbers of orders being directed into Barclays' pool. The vast majority of those trades that then executed in Barclays' dark pool did so with high frequency traders – the precise counterparties that Barclays represented to clients its algorithms were designed to avoid;

b) Barclays falsely represented that its "Liquidity Profiling" service applied to, and protected, orders routed to its dark pool by Barclays' algorithms. In truth, Liquidity Profiling did not apply to such orders;

c) Barclays falsely represented that its smart order router "treat[s] all venues the same based on execution quality," and was not biased in favor of any trading venue. In fact, Barclays' smart order router was biased in favor of its own dark pool, regardless of whether an order was likely to be filled there, and secondarily to other venues based on whether those venues were profitable for Barclays. When a detailed analysis of Barclays' order routing practices was conducted for a major institutional investor (that manages money for thousands of ordinary investors, including many in New York) showing that

Barclays was routing and executing the vast bulk of this client's sampled orders to Barclays' own dark pool, senior Barclays executives directed that a written presentation to that client be falsified to mask Barclays' biased order routing practices;

d) Barclays provided false analyses to clients, potential clients, and the public to hide the extent and type of high frequency trading in its dark pool. For instance, in June 2012, senior Barclays employees doctored a graphic representation of the trading in its pool by removing its then-largest participant, a high frequency trading firm named Tradebot that was known by Barclays to engage in predatory behavior. Internally, Barclays acknowledged that it was "taking liberties" with the truth by doctoring the analysis, but decided to falsify it anyway in order to "help ourselves." When other personnel raised objections, their concerns were brushed aside. In another example, Barclays falsely asserted to clients, potential clients, and the investing public that no more than 6% - 9% of the trading activity in its dark pool was "aggressive." In truth, multiple internal documents obtained by the Attorney General show that Barclays knew that at least 25% of the trading activity in the pool was "aggressive";

e) Barclays made a series of material false representations to clients, potential clients, and the public about its "Liquidity Profiling" service. Barclays claimed that its Liquidity Profiling service allowed traders to limit the kinds of counterparties with whom they would interact, "protect [clients] from predatory trading," and that Barclays would "continuously police . . . trading activity" in order to "maintain quality flow" in the dark pool. Those representations were false for several reasons, including that: (i) Barclays never removed a single trader – even known predatory traders – from its dark pool; (ii) Barclays failed to regularly profile traders in its dark pool; (iii) Barclays granted liberal "overrides" to high frequency trading firms and to its own internal trading

desk in order to make each appear less predatory than they really were; (iv) Barclays failed to apply the protections of Liquidity Profiling to a significant portion of the trading in its dark pool; (v) Barclays misled clients as to how Liquidity Profiling evaluated traders; and

f) In an effort to demonstrate its commitment to protecting clients from predatory traders, Barclays falsely represented that it had removed at least one predatory trader from its dark pool. Documents obtained by the Attorney General confirm that that representation was false. In reality, the high frequency trading firm at issue traded millions of shares per day in Barclays' pool during the relevant time period.

8. Also, contrary to its representations to clients that it was "protecting" them "in the dark" from high frequency trading strategies, Barclays provided detailed information regarding the structure and composition of its dark pool to high frequency trading firms, worked closely with those firms to increase their trading in the dark pool at favorable prices, and provided them with technical tools to exploit traditional investors.

9. In sum, Barclays represented to clients, potential clients, and the investing public that its electronic trading products and services offered protection from predatory or aggressive high frequency trading. In truth, Barclays' electronic trading products and services – its algorithms, its smart order router, and its dark pool – operated at odds with those representations.

10. As the detailed allegations herein demonstrate, the wrongdoing at issue was not limited to a few isolated incidents, nor was it the result of a few rogue employees. As detailed below, this was a broad course of conduct involving numerous Barclays employees.

11. Finally, despite representations to its shareholders and the investing public that Barclays "will continue to cooperate with the New York attorney general," Barclays has refused to cooperate in important respects with the Attorney General's ongoing investigation. For

instance, in the face of lawful subpoenas issued by the Attorney General demanding testimony under oath of the two highest-ranking executives within Barclays' Equities Electronics Trading Division – both of whom were directly involved in, and oversaw, much of the fraud alleged – Barclays has refused to produce those executives for questioning.

PARTIES

12. Plaintiff Eric T. Schneiderman is the Attorney General of the State of New York.

13. The State of New York has an interest in upholding the laws of the State, and the Attorney General of the State of New York is charged with enforcing those laws.

14. Accordingly, the Attorney General brings this action on behalf of the People of the State of New York pursuant to, among other authorities, the provisions of the Martin Act, General Business Law §§ 352 *et seq*, which provide that the Attorney General may commence a civil action seeking legal and equitable relief for fraudulent or deceptive acts and practices concerning the issuance, distribution, exchange, sale, negotiation or purchase of securities within or from this State.

15. Barclays PLC is registered in England. Barclays PLC functions in the United States through Barclays Capital Inc., an affiliate of Barclays PLC. Barclays operates in fifty countries with particularly large business operations in New York and London. Barclays Capital Inc. is a registered broker-dealer and investment adviser with its primary offices at 745 Seventh Avenue, New York, New York.

16. As part of its business in New York, Barclays operates as a registered broker-dealer. Barclays' brokerage clients, serviced out of Barclays' New York offices, include many institutional investors, mutual funds, pension funds, and others ("buy-side" clients).

17. Many of Barclays' buy-side clients manage accounts for thousands (or more) individuals and retail investors, including many New York residents.

FACTUAL ALLEGATIONS

I. BACKGROUND – MODERN ELECTRONIC TRADING

18. High frequency trading is a type of trading that uses sophisticated computer programming to conduct securities transactions extremely quickly in order to take advantage of small, momentary changes in stock prices. While not all high frequency traders use the same kinds of trading strategies, certain characteristics are common. Those firms tend to trade securities for their own account (as opposed to doing so on behalf of clients), and use high-speed, sophisticated computer programs to generate, route, and execute orders rapidly on multiple trading venues. High frequency trading firms typically maintain unhedged positions in a given security for a very short period of time (frequently one second or less) and have a high rate of cancelled orders (in other words, a high rate of orders that are submitted to trading venues, but are cancelled before the order is executed). They typically begin and end each trading day without significant, unhedged positions.

19. Some estimates place high frequency trading activity at over fifty percent of the total trading volume in U.S.-listed equities.

20. In order to execute their trading strategies effectively, high frequency traders seek speed advantages. Some pay to “co-locate” or “cross-connect” their trading computers in the same facilities as public exchanges and dark pools in order to reduce the amount of time it takes to receive market information from those trading venues, and in order to rapidly place or cancel orders. These firms pay a premium for “direct data feeds” from trading venues, which are high-speed data feeds that travel faster and contain more information than market data available to ordinary investors by other, less expensive means.

21. Those speed and technology advantages allow high frequency traders to profile the pending orders on a trading venue in order to detect the presence of large pending orders,

usually from institutional investors. This “information leakage” allows high frequency traders to trade ahead of an anticipated stock purchase or sale or to have a negative impact on the price obtained by the institutional investor in that securities transaction. Speed and technology advantages also allow for strategies that seek to exploit the small, temporary pricing dislocations in a security that occur because of differential and/or delayed access to market data. This strategy is sometimes referred to as “latency arbitrage,” because the high-speed trader is seeking to exploit the relative slowness, or “latency,” in the transmission of market data experienced by other participants.

22. Barclays commonly labeled those types of high frequency strategies as “toxic,” “predatory,” or “aggressive.”

23. Institutional investors often seek to avoid interactions with high frequency traders because of the negative impact those sorts of strategies can have on an investor’s trading performance, making it harder for orders to be filled or resulting in those orders being filled at worse prices.

24. Certain brokers, including Barclays, have developed electronic products and services, supposedly to help traditional investors avoid interactions with predatory or aggressive high frequency traders. Among the products and services marketed for this purpose are (i) algorithms; (ii) smart order routers; and (iii) dark pools.

25. “Algorithms,” in the context of electronic trading, are automated computer programs that enact complex trading instructions to automatically execute large client trades over a period of time, usually over the course of a trading day. Algorithms are typically marketed as tools for institutional investors to effectively place large stock orders, dividing up the order into smaller portions, avoiding (as much as possible) interaction with aggressive high frequency traders, and thereby maximizing fill rates and minimizing adverse price movement. Algorithms

generally take into account the size of the order, the current price of the security on various trading venues, and client objectives when determining how to execute the trade over a given period of time.

26. “Smart order routers” are automated systems that, generally speaking, look for liquidity on the various equities trading venues, making decisions about where to send orders so as to maximize the likelihood that the order is filled. In many circumstances, a smart order router functions after an algorithm; for instance, after the algorithm determines the general strategy of how to execute an order over the course of the day, the smart order router determines the best venue on which to place the various parts of the order.

27. “Dark pools” were developed as another method to protect client orders from aggressive high frequency traders. Today in the United States, equities securities are traded on eleven public stock exchanges and dozens of privately-owned and operated trading venues. Unlike public exchanges, on which pending orders are generally visible to participants, and executions are posted immediately, dark pools generally do not post pending orders. The lack of visibility of pending orders – the “dark” aspect of such venues – is thought to help protect traditional (non-high frequency) traders with large orders and long-term positions from the strategies employed by high frequency trading firms on the public exchanges, as discussed above. It is estimated that a significant percentage of all U.S. equities trades are executed in dark pools.

II. BARCLAYS EMBARKED UPON A PLAN TO GROW ITS ELECTRONIC TRADING DIVISION, BASED ON SUPPOSEDLY PROTECTING INVESTORS

28. Beginning in 2011, Barclays began a major effort to grow the revenues of its Equities Electronic Trading Division, which operates several related lines of business, including algorithms, smart order routing, and Barclays’ dark pool.

29. Since 2011 and at least until the filing of this Amended Complaint, Barclays' Equities Electronic Trading Division has been overseen by William White, whose title is Managing Director and Head of Electronic Trading.

30. Since early 2012 and at least until the filing of this Amended Complaint, White's second-in-command has been David Johnsen, whose title is Head of Product Development.

31. Immediately prior to his hiring by Barclays, Johnsen oversaw and had supervisory responsibilities for the dark pool at Goldman Sachs. Johnsen was terminated by Goldman Sachs in early 2012 based on concerns regarding his failure to properly supervise that dark pool, and for providing inaccurate information in materials prepared in connection with a Financial Industry Regulatory Authority ("FINRA") inquiry.

32. In late 2011, under White's leadership, Barclays developed an internal written business plan for the Equities Electronic Trading Division, which described in detail Barclays' plan to attract new clients to its electronic trading products. In a later, internal-only document titled "US Electronic Distribution: Road Map," Barclays detailed how it would conduct an aggressive marketing campaign to draw in new clients, increase business from existing clients, and hopefully make Barclays a preeminent player in the electronic trading space.

33. Barclays business plan intended to increase the number of orders that clients sent to Barclays for handling and execution. Barclays also sought to increase the market share of its dark pool called "Barclays LX." According to a former senior Director in that division, "All the product team's goals, which would also include their compensation[,] were tied to making the pool bigger. [Barclays had] great incentive at all costs to make the pool bigger."

34. Increasing the size of its pool required Barclays to route more of its clients' orders into its own dark pool, and to make sure that there was sufficient liquidity in the pool to fill those orders. Barclays looked to attract high frequency traders to its dark pool to meet this need for

liquidity. At the same time, Barclays sought to convince its brokerage clients that its dark pool was a safe place to trade, insulated from the kinds of aggressive or predatory high frequency trading practices that are associated with other trading venues, including the public stock exchanges.

35. In a section of the internal business plan entitled “*Marketing’s Role in Driving Growth*,” Barclays detailed how it intended to “Build awareness of Barclays in electronic trading” among large institutional brokerage clients (and potential clients) using “Sales Sheets and Pitchbooks,” “Advertising,” “PR,” “Gifts,” “Conferences,” “Appearances,” “Road Shows,” “Client Pitches,” “Client events,” “Press Interviews,” “Press Releases,” “White Papers,” “Awards,” and other forms of communication.

36. According to the business plan, Barclays’ marketing efforts were intended to “[i]ncrease [the] likelihood of including Barclays in the client’s consideration set of electronic providers,” “drive existing clients to repeat business with Barclays,” and “[d]rive trial of Barclays offerings” by potential clients. The internal business plan contained “focus lists” of dozens of specific clients and potential clients that Barclays would target, to entice those investors to send more of their trades to Barclays for routing and execution.

37. Barclays believed that such materials were material and important to clients’ and potential clients’ decisions to send their securities orders to Barclays.

38. In other internal documents, Barclays noted that “[a]ggregating [order] flow into [Barclays’ dark pool] has strategic and economic value for the entire Equities business,” including the savings Barclays would realize by not having to pay commissions to execute trades on other venues; fees gained from firms paying to trade in the dark pool; and the “internal trading P&L [profit and loss] opportunities” available to internal Barclays trading desks that trade in the dark pool against brokerage client order flow. Barclays also identified the “market

share value of attracting more [order] flow” into its dark pool. Internal Barclays documents valued this growth opportunity at between \$37 million and \$50 million per year.

39. Barclays’ representations to clients and potential clients focused on what Barclays claimed was “*End-To-End Client Order Protection.*” Barclays represented to clients, potential clients, and the investing public that its electronic trading products and services (algorithms, smart order router, and dark pool) worked together to “protect client orders and minimize information leakage,” in order to “maximize fill rates” and “minimize market impact.” Fill rates and market impact (meaning whether prices move against a client) are material to the terms of any securities transaction.

40. Barclays represented that it would use its algorithms, router, and dark pool to increase the number of its clients’ trades that were executed, secure better prices for those trades, and minimize the ability of high frequency traders to anticipate the orders and trade ahead of them. Barclays would do this by, among other things, providing algorithms and smart order routing services that were designed and operated to handle client orders based on what was best for clients, and by operating a dark pool that protected clients from predatory high frequency trading.

41. The particular representations made by Barclays describing the design and operation of its algorithms, smart order router, and dark pool are set forth in extensive detail in Section III, below.

42. Barclays intended for its marketing representations to help convince clients to use Barclays as a broker and to direct more orders to buy or sell securities to Barclays.

43. The execution of Barclays’ business plan over the course of 2011 through 2014 helped Barclays expand its Equities Electronic Trading business. For instance, Barclays’ efforts

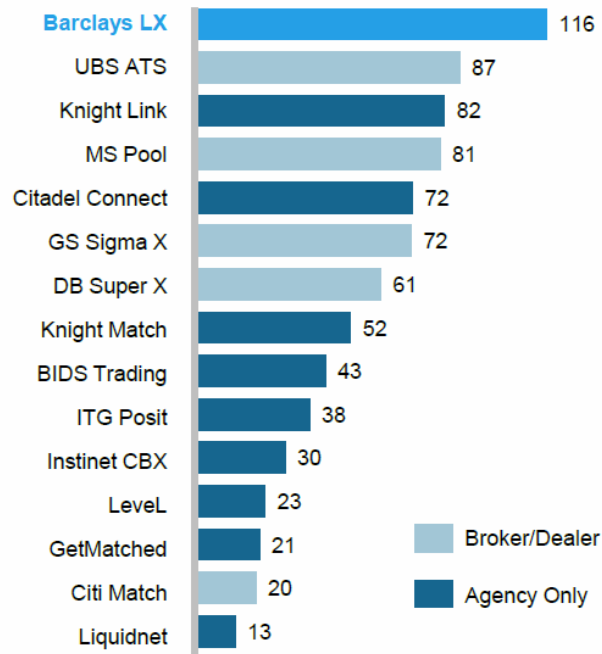
were successful in vastly increasing the market share of Barclays' dark pool and the number of trades executed in its dark pool.

44. As of 2011, Barclays' dark pool did not stand out among the several dozen dark pools operating in the United States. When measured by average daily volume of shares traded, Barclays' dark pool was essentially middle-of-the-pack.

45. By late 2013, independent analysts reported that Barclays operated one of the two largest dark pools in the United States, as measured by reported average daily shares traded. According to one industry publication, Barclays, "which was barely among the 10 biggest U.S. dark pools as recently as 2009, moved into second place in January 2013, and later in the year ascended to the top of the heap."² Barclays marketing material dated April 2014 touted the market share of its dark pool:

² Certain published reports suggested that Barclays was the second largest dark pool operator in the United States, given that one other dark pool operator had declined to report its volumes. Barclays has marketed itself as the largest, based on reported volumes. In either event, Barclays became one of the two largest dark pools in the United States.

US Dark Pool Competitive Landscape – January¹



46. On February 20, 2014, Barclays’ dark pool was named the “Best Dark Pool” by an industry publication. In commenting on the award in marketing material labeled “for institutional investors only,” William White attributed its growth to Barclays’ commitment to being transparent with its institutional investor clients regarding how Barclays operates, how Barclays routes client orders, and the kinds of counterparties that traders can expect to deal with when trading in Barclays’ dark pool. White stated that transparency was “the one issue that we really took a stance on . . . We always come back to transparency as the key driver — letting [clients] know how we’re interacting with their flow and what type of flow they’re interacting with.” White added that “[t]ransparency on multiple levels is a selling point for our entire equities franchise.”

III. BARCLAYS COMMITTED FRAUD IN CONNECTION WITH THE MARKETING AND OPERATION OF ITS ALGORITHMS, SMART ORDER ROUTER AND DARK POOL

47. Far from being “transparent” and allowing clients to understand the way in which Barclays was treating their orders, Barclays systematically made misrepresentations from 2011 until at least the filing of the initial Complaint in 2014 regarding how its algorithms worked; how its smart order router worked; the extent of aggressive or predatory high frequency trading in its dark pool; how its “Liquidity Profiling” service worked and how Barclays policed its dark pool; and the level of protection Barclays provided from aggressive trading across its electronic trading products and services.

A. Barclays Misrepresented How Its Algorithms Worked

1. Contrary to Barclays’ Representations To Clients and Potential Clients, Barclays’ Algorithms Were Biased to Preference Its Own Dark Pool

48. In numerous marking materials, in sales presentations, and in other communications made directly to clients and potential clients from 2011 until at least the filing of the initial Complaint in 2014, as well as in statements posted to Barclays’ website during that period, Barclays represented that its “liquidity seeking” algorithms:

- make “decisions based on real-time market information,”
- “do not use a pre-determined schedule that can be gamed” by high frequency traders looking for “a detectable pattern”; and
- do not use a “one size fits all” strategy.

49. Among the most popular “liquidity seeking” algorithms Barclays offered during that time period were algorithms named “Hydra” and “Implementation Shortfall,” each of which Barclays represented would “maximize fill rates” and “minimize market impact [and] information leakage” in order to “protect against adverse price moves.” As noted previously, fill rates and price are fundamental terms in any securities transaction.

50. Barclays represented that instead of using a “static schedule” of venues, its algorithms used “[d]ynamic order placement” logic in order to “eliminate a detectable pattern” in the placement of trades.

51. Those representations were false. In reality, and contrary to Barclays’ representations, its algorithms were designed to preference Barclays’ own dark pool.

52. On January 31, 2011, William Libby, Barclays’ Vice President of Electronic Trading Services, sent a document entitled “2011 Goals” to William White. In that document, Libby noted that a goal of the division was to “Rewrite Hydra [algorithm] and add components to all liquidity seeking algos like [Implementation Shortfall] to increase LX cross rates” – meaning, to increase the rate at which the algorithms executed orders in Barclays’ own dark pool.

53. According to internal Barclays documents, the division’s goal of re-writing Barclays’ algorithms to favor its own dark pool was accomplished by early 2012. According to minutes of an August 30, 2012 “Best Execution Committee” meeting, Merrell Hora (then the Head of Algorithms) told the Committee that Barclays had “chang[ed] the overall algo plant” which “resulted more often in rebate taking and which often involved targeting LX more frequently.” Further, Hora explained that one particular algorithm “had been decommissioned because *the core algos has been updated at this point to preference LX anyway*” (emphasis added).

54. Later in the meeting, Jacek Janczewski, head of dark pool operations, explained that “a big focus for the remainder of the year was to identify and enable more flow to be internalized that was currently not accessing” the dark pool.

55. On November 6, 2012, Nej D’jelal, a Barclays employee, wrote an email to senior leadership in the Equities Electronic Trading Division, including White and Johnsen, noting that

“As expected, LX volumes and our cross rate continue to grow . . . Deliverables this month saw the introduction of key LX items in the form of Liquidity Profiling and *new LX friendly algo logic*” (emphasis added).

56. In an April 19, 2013 instant messaging exchange between Antonio Trillo and David Green, both Barclays sales personnel, Trillo stated that “*we preference LX on the [smart order router] portion of a strategy like hydra,*” and noted that a high percentage of algorithmic orders execute in Barclays’ own dark pool (emphasis added).

57. The reprogramming of Barclays’ algorithms to preference its own dark pool was not only inconsistent with Barclays’ public representations, but also had the effect of exposing client orders to high levels of high frequency trading activity. According to minutes of the June 7, 2012 Best Execution Committee meeting, Jacek Janczewski, head of dark pool operations, stated to other senior division personnel present (including David Johnsen) that “approximately 70% of the algo crossing in LX was with ELPs.”³ A high rate of client trading with high frequency traders – which can impact the rates and prices at which client orders are executed – was the very outcome that Barclays represented it would help clients avoid if they used Barclays’ algorithms.

2. *Contrary to Barclays’ Representations, Client Orders Sent to the Dark Pool via its Algorithms Were Not Protected by the Liquidity Profiling Service*

58. Barclays also represented to clients and potential clients that orders routed to the dark pool via Barclays’ proprietary algorithms would be subject to, and thus protected by, its “Liquidity Profiling” service.

59. As described in greater detail in Section III(E), below, Barclays’ “Liquidity Profiling” was a surveillance system that supposedly would allow Barclays’ clients to determine

³ “ELPs,” or “electronic liquidity providers,” is nomenclature used at times by Barclays personnel to refer to high frequency traders.

the types of counterparties with whom they trade in Barclays' dark pool. Barclays represented that Liquidity Profiling monitored every trade in the dark pool, objectively and fairly graded traders by how "toxic" or "aggressive" their trading activity was, and allowed clients to decline to trade with such counterparties when trading in the pool.

60. As an example of how Barclays' representations to clients, in a written "Reference Guide" first given to Barclays sales staff in late 2011, Barclays set forth a number of "Frequently Asked Questions" from clients regarding Barclays algorithmic offerings. In response to a client query "How do your algorithms mitigate the risk to adverse price selection in dark venues?" Barclays sales staff was instructed to answer that Barclays "monitor[s] activity of participants within the dark pool using the Liquidity Profiling data analysis framework . . . This framework allows Barclays ATS employees to . . . identify potentially disruptive trading strategies, such as latency arbitrage employed by some high frequency trading firms."

61. In response to another frequently asked question "How has your algorithmic offering adapted to efficiently facilitate execution with the increase in high frequency trading over the last several years?" Barclays directed its sales staff to "[p]lease see question 1 regarding liquidity profiling," which is the response noted in the preceding paragraph.

62. The answers set forth in the "Reference Guide" remained in use by Barclays' sales personnel, in various forms, through at least 2012.

63. Senior Barclays employees represented to the investing public that orders sent through Barclays algorithms were protected by Liquidity Profiling. On June 6, 2013, the online magazine *Hedgeweek* published an interview with William White, Head of Electronic Trading, wherein White stated that Barclays "[has] an algorithm and a scoring methodology that basically creates a liquidity spectrum . . . as we are able to restrict HFTs interacting with our clients we're getting the better half of their order flow."

64. Barclays made similar representations in response to numerous written client requests seeking information about how Barclays' algorithms operated.

65. For example, in February 2013, Barclays was sent a written list of questions by a major public pension plan, which manages accounts on behalf of hundreds of thousands of public employees. One of the questions asked "Do you categorize clients using your algorithms?" In its written response to the pension plan, Barclays answered that while its algorithms themselves do not categorize clients, in the dark pool "we employ our advanced Liquidity Profiling framework to categorize clients according to objective trading characteristics."

66. Documents obtained by the Attorney General establish that Barclays made a nearly identical representation in response to at least six other written questionnaires containing the same question sent by clients on, respectively, February 11, 2013; March 12, 2013; March 22, 2013; August 6, 2013; September 16, 2013; and October 25, 2013.

67. Barclays' written representations to its clients and potential clients regarding the applicability of Liquidity Profiling to algorithmic orders were false. In truth, Liquidity Profiling did not apply to orders sent to Barclays' dark pool via Barclays' algorithms.⁴

68. Senior Barclays personnel were aware that clients and potential clients were under the mistaken impression that orders routed to the dark pool via Barclays' algorithms were protected by Liquidity Profiling, but did nothing to correct the false impression that Barclays itself created.

⁴ Barclays effectively acknowledged this in its Memorandum of Law In Support of its Motion to Dismiss the initial Complaint, filed in *People v. Barclays Cap., Inc. et al.*, Index No. 451391/2014 (Docket No. 33, Aug. 8, 2014) (*see* pages 23-24).

69. In an August 19, 2012 email to several senior division employees (including Anthony Pallone, Jacek Janczewski, and Sarah Naegele), David Johnsen, Head of Product Development and second-in-command of the Equities Electronic Trading Division, wrote that “what is a real issue for institutions is that the Profiling tag doesn’t get fed from the algos . . . *that’s just stupid and certainly something that they assume we are doing*” (emphasis added).

B. Barclays Falsely Represented the Manner in Which it Routed Client Orders

70. In written marketing materials sent to clients and potential clients, and in statements posted on Barclays’ website from 2011 until at least the filing of the initial Complaint in 2014, Barclays represented that its routing system “uses unique market intelligence, predictive liquidity models, and high-performance technology to maximize fill rates while reducing information leakage.” These points are each material in connection with securities transactions. Barclays represented that its smart order router “synthesizes historical and real-time data and executions to predict liquidity,” using “[p]robability of fill models for both aggressive and passive trading.”

71. In pitchbooks sent to clients and potential clients, and in statements posted on Barclays’ website from 2011 until at least the filing of the initial Complaint in 2014, Barclays represented to investors that, when routing client orders to various trading venues in the United States, Barclays ranked trading venues “dynamically,” using “parallel routing to all venues based on probability of fill.” Barclays claimed that its smart order router “[t]reat[s] all venues the same based on execution quality.”

72. In response to written questionnaires sent from clients in 2013, Barclays stated that its router did not preference any venue and did not route to venues based on where Barclays received payments for orders. For instance, in a July 12, 2013 response to a client’s written question “Do you have any matching or routing logic built in to preference certain customers or

venues based on criteria other than execution quality?” Barclays answered: “*No. The Dynamic SOR is built to preference venues solely on performance metrics*” (emphasis added). Barclays made substantially similar representations in response to other client inquiries.

73. On March 28, 2014, Barclays distributed an internal document to employees that included “Selling points on our dark pool and order handling practices.” Barclays instructed its employees to tell clients and potential clients that, among other things:

- Barclays “[e]mploy[s] predictive models to optimize where and how we post and take liquidity,” (emphasis omitted),
- The “primary factors” taken into account by Barclays when routing its clients’ orders “include: real-time market data, real-time venue fill rates, and historical venue market share,” and
- Barclays “dynamically learns where liquidity is trading” and routes trades to those venues.

74. On April 9, 2014, in response to media coverage about the prevalence of high frequency trading in the U.S. markets, Barclays distributed, via email, a communication to dozens of existing clients intended to assuage possible concerns about Barclays’ order routing and dark pool practices. That communication stated, in relevant part, that Barclays “handle[s] orders in the best interests of our clients. Order routing decisions are primarily based on the probability of fill; venue ranking is data-driven and our router dynamically learns with experience.” The email communication was signed by William White, Head of the Equities Electronic Trading Division, and David Siffringer, Head of Equities Distribution, Americas.

75. Those representations were consistent with how Barclays’ sales staff marketed Barclays’ smart order routing services to investors in direct, one-on-one written communications with clients and at in-person meetings. For example, on April 9, 2014, a client emailed David Siffringer with questions about Barclays’ order routing logic; David Johnsen, Head of Product

Development and second-in-charge of the Equities Electronic Trading Division, responded on behalf of Siffringer, telling the client that Barclays' smart order router "dynamically adjusts its behavior order-by-order based on where it is finding liquidity."

76. With respect to in-person meetings between Barclays and its potential clients, one former Director in Barclays' Equities Electronic Division, who attended multiple sales meetings with clients, recalls that in every sales presentation at which he was present, clients were told by Barclays employees that "the router was routing based on best execution," and that it was "dynamic, making decisions based on market conditions and probability of achieving a trade."

77. In short, Barclays repeatedly represented to clients, potential clients, and the investing public that it routed client orders in a manner that was not biased in favor of any particular trading venue.

78. Barclays believed the above representations to be material to clients and potential clients.

79. Barclays' representations about its how it routed clients' orders for execution were false and misleading for several reasons, including:

- Essentially all client orders routed to dark pools were routed to Barclays' own dark pool first, regardless of the probability that a given trade would execute there, would execute at a favorable price, or would cause information leakage; and
- After having been routed to Barclays' dark pool first, unfilled orders were then routed disproportionately to other trading venues based on where Barclays itself had been most profitable over the previous twenty days, or which were otherwise economically advantageous to Barclays – not based on what was best for clients' orders.

80. As recalled by a former Barclays employee whose job required knowledge of order routing: "[Barclays was] supposed to route trades based on best probability of a fill. Based on what was the best benefit to clients. That is the way it was supposed to work . . . [it did

not work that way] because that was not economically advantageous for Barclays.” In the words of this Director, Barclays routes trades to its own dark pool “whether it is right or not.”

81. As another former Barclays employee recalled, “what Barclays did was rather than route [client orders] in a manner that would fulfill [their] needs, that would give best execution . . . they jammed it all into [Barclays own dark pool].” Another former employee recalls, “such a high [] internalization rate could suggest that there were other opportunities being missed and [clients] weren’t receiving the true best executions.”

82. Barclays was well aware that its order routing practices were in conflict with its representations to clients, potential clients, and the investing public at large.

83. According to minutes of a Barclays June 7, 2012 “Best Execution Committee” meeting, Charles Lam, Head of Smart Order Routing, stated to other senior members of the division that “the fill rate on posted orders” had been down over the previous quarter, likely because Barclays “had removed certain exchanges from execution in an attempt to maximize rebates, and this likely had an impact” on the rates at which client orders were being filled. In other words, more client trades were not getting filled because Barclays stopped routing to certain venues that did not offer sufficient financial incentives to Barclays.

84. In 2013, senior directors in the Equities Electronic Trading Division began a broad analysis of Barclays’ order routing practices, gathering detailed trade data from over 100 million unique trades. Upon analyzing the data, these directors determined that Barclays had an extremely high “internalization rate” – that is, a high rate of routing client orders into Barclays’ own dark pool. The analysis also determined that certain trading venues were disadvantaged by Barclays’ routing procedures, either because Barclays was submitting orders that had no chance of being accepted in that particular venue, or because those venues were not seen as financially beneficial for Barclays. The analysis also determined that the trading venues to which Barclays

routed unfilled orders (after first having routed them to its own dark pool) tended to be venues hosted by high-speed trading firms, “[n]one of which,” recalled one Director, “had a reputation for being favorable to clients from an execution perspective.” Those venues are operated by Knight Capital, Getco, and Citadel.

85. In October, 2013, Barclays prepared a trading analysis for a major institutional investor that services millions of individual accounts both inside the United States (including for many New Yorkers) and abroad (“Institutional Investor”). Barclays knows the identity of this Institutional Investor.

86. The senior directors’ analysis determined that:

- Approximately 88% of this Institutional Investor’s sampled trades in dark venues were executing in Barclays’ dark pool;
- Approximately 60% of the trading counterparties for the Institutional Investor’s sampled orders were high frequency trading firms; and
- Approximately 75% of *all* orders routed by Barclays to dark venues were executing in Barclays’ own dark pool.

87. Those extraordinarily high internalization rates strongly suggest that Barclays’ representations to investors that it did not route orders in favor of any particular trading venue were false or misleading.

88. In preparation for a meeting with the Institutional Investor to explain those findings, two senior directors prepared a PowerPoint presentation that included the results of the trading analysis. Two days before the scheduled meeting, one of those senior directors was called into a meeting with senior leadership in the Equities Electronic Trading Division, including Charles Lam, Head of Smart Order Routing. The senior director was instructed not to disclose the findings to the client. According to this senior director, “[t]here was no suggestion at that meeting, or at any other point, that the analysis was wrong,” merely that it should not be

shared with the client because it reflected poorly on Barclays. Despite the pressure from senior leadership, this senior director declined to agree to withhold the findings from the Institutional Investor. The next day, and prior to the scheduled meeting with the Institutional Investor, this senior director was fired by William White.

89. Another senior director was then instructed to change crucial figures in the PowerPoint presentation, in order to make them more favorable to Barclays. Specifically, that director was instructed to change Barclays' internalization rate for all orders routed to dark venues from 75% to 35% – a number far less damning to Barclays and which would have the effect of making the Institutional Investor's 88% internalization rate look like an outlier. As described by this former senior director, this was an effort by Barclays "to shift blame to the client . . . This 35 percent is not true and not validated by anything." Despite this director's protestations, the analysis was altered, and the PowerPoint was presented to the Institutional Investor. Shortly after this incident, this senior director resigned from Barclays.

90. In the days after that employee was fired, a third Barclays employee, who was not involved in the presentation to the Institutional Investor, was tasked with analyzing the relevant data to determine what percentage of the Institutional Investor's orders were in fact routed to Barclays' own dark pool. In other words, the third employee was tasked with confirming whether the first two directors' analysis was correct.

91. On February 6, 2014, the results of this third employee's analysis were circulated among various members of the division. As this employee noted in an email, "Data is attached. [I] just want to note a few things . . . **% executed in LX is very high for 2013. LX as a high % of all dark remains true**" (emphasis added). This employee found that for the relevant Institutional Investors' orders between 100 and 400 shares, over 90% were executed in Barclays own dark pool. Larger trade sizes (above 400 shares) were executed in Barclays' dark pool between 70

and 81% of the time. In other words, the original analysis conducted by the senior directors showing an extraordinarily high internalization rate was correct.

92. In a separate email conveying those results to senior Barclays personnel (including Jacek Janczewski, head of dark pool operations and Charles Lam, head of Smart Order Routing), it was noted that “small orders tend to have a large percentage of their dark executions in LX. Large orders tend to have a smaller (but still the majority) of dark executions in LX.”

D. Barclays Misrepresented the Extent of Aggressive Trading in its Dark Pool

93. In written marketing materials, statements to the public, and in sales meetings with clients, potential clients, and other market participants from 2011 until at least the filing of the initial Complaint in 2014, Barclays represented that its dark pool provided a safe, transparent trading environment with low levels of “aggressive” high frequency trading activity.

94. In truth, Barclays made false representations to clients, potential clients, and the investing public regarding the amount and type of trading and participants in its dark pool.

1. Barclays Falsified its Analysis Purporting to Show the Extent of Aggressive Trading in its Dark Pool

95. Beginning in 2012, Barclays created and disseminated analyses about the composition of trading in its dark pool, purporting to show how clients were protected from aggressive high frequency trading activity, and underscoring Barclays’ purported commitment to transparency. One such analysis was in a widely-disseminated document intended for institutional clients titled *Liquidity Profiling – Protecting Clients in the Dark*.

96. This document was posted to Barclays’ website from the time of the document’s creation until the filing of the initial Complaint in this action, and was available to the investing public.

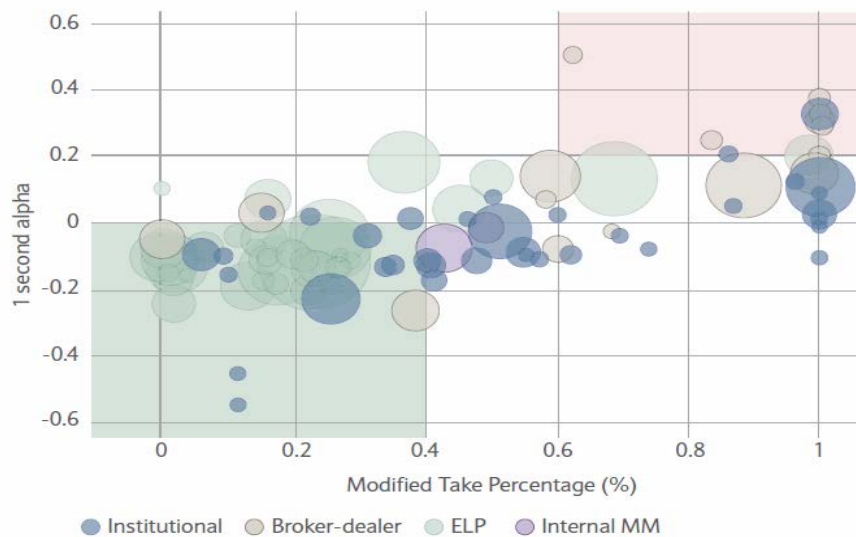
97. Additionally, this document was repeatedly provided to clients and prospective clients who sought specific information about Barclays' dark pool and other electronic trading services. For example, on September 27, 2013, a major institutional investor sought information from Antonio Trillo, a member of Barclays' electronic trading sales staff, about Barclays' electronic services and "what we do to filter flow." In response, Barclays sent the company a one-page "tear-sheet" containing the relevant analyses. Barclays' also sent its general pitchbook on its electronic trading offerings, and a list of "Frequently Asked Questions" about Barclays' electronic trading products and services. Those materials contained the false statements detailed below.

98. Barclays routinely sent these materials to clients in response to questions about how its dark pool operated.

99. Within that document was an analysis purporting to represent the "liquidity landscape" of Barclays' dark pool. The results of the analysis were presented as follows:

Figure 1: Sample liquidity landscape by category

Participants in the same category do not trade in the same manner. With LX Profiling, the Barclays ATS team can quickly identify aggressive flow from an individual client.



100. Each circle in the chart represents one firm trading in Barclays' dark pool. The size of the circle corresponds to the level of trading activity conducted in the dark pool by that firm. Different types of traders are assigned different color circles; the pale green circles are ELPs, the term Barclays used for high frequency traders. Within the chart are two color-coded regions, a green rectangle representing "passive" (*i.e.*, safe, non-predatory) trading activity, and a red rectangle representing "aggressive" (*i.e.*, predatory) trading. The x-axis, ("modified take percentage," which is percentage of a trader's orders that take liquidity), and the y-axis, ("1-second alpha," which is the price movement in the one-second following each trader's trades), are presented here as relevant measures of trading behavior in the dark pool.

101. The chart represents that very little of the trading in Barclays' dark pool is "aggressive." As represented by the chart, most of the trading in the dark pool is "passive," and most of the ELP/high frequency activity is "passive." In its entirety, the chart represents that Barclays' dark pool is a safe venue with few aggressive traders.

102. Barclays' sales staff heavily promoted this analysis to investors as a representation of the trading within the dark pool, and marketed that analysis as "a snapshot of the participants" in order to show clients "an accurate view of our pool." In addition, certain Barclays marketing materials appended a notation to the chart explaining that it portrays the top 100 clients trading in the dark pool.

103. This analysis was included in pitchbooks and other documents provided to clients and potential clients between 2012 and 2014. Additionally, documents obtained by the Attorney General from Barclays establish that members of Barclays' Equities Electronic Trading Division, including William White and Jacek Janczewski, used versions of this chart in presentations to clients and potential clients on multiple occasions in 2012, 2013, and 2014.

104. Barclays believed that the analysis and accompanying statements were material to clients and potential clients.

105. The chart and accompanying statements misrepresented the trading taking place in Barclays' dark pool, because senior Barclays personnel de-emphasized the presence of high frequency traders in the pool, and deleted from the chart one of the largest and most toxic participants in Barclays' dark pool.

106. On October 5, 2012, a draft version of the analysis was circulated by Martin Lujan, a Barclays analyst, to senior executives in Barclays' Equities Electronic Trading Division. Lujan noted that the analysis "de-emphasized the number of ELPs [high frequency traders] by moving them to the back." The email also stated that the chart "remov[es] Tradebot." Tradebot Systems, Inc. had historically been, and was at that time, the largest participant in Barclays' dark pool, with an established history of trading activity that was known to Barclays as "toxic." Those alterations had the effect of obscuring the amount of high frequency trading activity in the dark pool by disguising the total number of high frequency trading firms, and deleting one significant and aggressive high frequency firm altogether.

107. In a response email, one employee objected to the modified chart, stating that removing Tradebot from the analysis was a falsification of the data. In response to this objection, a Director in the Equities Division named Roland Jarquio emailed that "the point of the chart is not to show what's in the pool. The point is to market our capability . . . to monitor individual participants in the pool."

108. Sarah Naegele, the Barclays Vice President responsible for selling the dark pool to clients, disputed Jarquio's rationalization, replying to the group that "[m]y point when selling that picture was always: 'here is a snapshot of the participants in [Barclays' dark pool] as an

accurate view of our pool.’ I was never using it like an ‘illustration’” of Barclays’ capability to monitor the pool.

109. Nevertheless, Naegele approved the use of the doctored analysis, indicating: “I had always liked the idea that we were being transparent, but *happy to take liberties if we can all agree*” (emphasis added).

110. Jarquio responded in agreement with Naegele, noting that the doctored chart would help Barclays appeal to institutional investors concerned about the amount of high frequency trading in the dark pool: “The answer is simple: we are talking to institutional, long only, nervous clients. That’s the target audience. Our solution to calm their fears could be 1/ show them we have the capability . . . to police and/or 2/ show them exactly what is in the pool.” Jarquio ultimately concluded that showing clients “exactly what is in the pool” was “*the wrong way to go*” in quelling their fears (emphasis added).

111. David Johnsen, second-in-command within the Equities Electronic Trading Division, agreed, responding to the group that “I think the accuracy [of the chart] is secondary to [the] objective” of showing clients that Barclays monitors the trading in its dark pool, and “so if you want to move/kill certain bubbles, it doesn’t really matter.”

112. Anthony Pallone, Barclays’ Head of Equities Sales responded to Johnsen: “Yes! U smart.”

113. In another email that same day, Pallone noted in reference to the doctored analysis that some in the industry viewed Barclays’ dark pool as a “toxic landfill,” and so “[i]f we can help ourselves we should[;] its in our control.”

114. Removing Tradebot from the analysis meant that the doctored chart was at no point an accurate “sample” of the trading in Barclays’ dark pool.

115. Additionally, Tradebot was removed from the analysis *after* Barclays' Compliance department had approved the content of the document, and *after* Compliance had raised concerns about the accuracy of the document and its potential to mislead clients.

116. On October 4, 2012 – the day before the above email exchanges took place – Jarquio circulated the (un-doctored) chart to Compliance personnel for approval. One Compliance employee sought more information on the chart, specifically regarding the source of the data used to prepare it. Another Compliance employee asked Jarquio where the data about the “Top 100” pool participants reflected in the (un-doctored) chart originated. Compliance personnel were given the impression by Jarquio that the chart would only be presented to clients with “more explanatory information” and “additional colour” about what the chart truly represented (even in its un-doctored form).

117. On that basis, approval was secured from Compliance to disseminate the document to clients and potential clients.

118. The next day, October 5, 2012, Jarquio removed Tradebot from the analysis, leading to the conversation detailed above.

119. Despite the assurance to Compliance that the analysis would be presented only with accompanying “explanatory information” and “additional colour,” the document was provided to Barclays' clients and potential clients, and displayed on Barclays' website, from October 2012 until the filing of the initial Complaint in June 2014, without such accompanying context, and – unbeknownst to Compliance – with the largest and most toxic trader removed from the analysis.

120. Since Tradebot was erased in October 2012, multiple Barclays employees have questioned the accuracy of the analysis. For instance, on June 12, 2013, a Vice President in the Equities Electronic Trading Division emailed several colleagues, having noticed that Tradebot

was removed from the analysis: “Can someone tell me where Tradebot is in Figure 1? It looks like some of those data points have been moved around.” Martin Lujan forwarded this email to Sarah Naegele, saying only: “Reprising this old debate.” The analysis was not corrected.

121. On April 14, 2014, an employee in Barclays’ Equities Marketing Division was tasked with reviewing certain marketing materials provided to institutional investors. With regard to the document in question, this employee asked Sarah Naegele by email whether it was in fact accurate that the analysis represented the “Top 100” traders in the dark pool. Rather than tell the truth – which was that one of the largest traders in the pool had been deleted – Naegele responded in an email that the analysis did represent the Top 100 traders.

122. The analysis at issue was also misleading because traders represented to be in the “passive” field of the chart were not necessarily rated by the Liquidity Profiling service as having passive trading behavior. The same is true of the “aggressive” field. Those traders that were represented to be in the “aggressive” field of the chart were not necessarily rated by the Liquidity Profiling service as having aggressive trading behavior. That is because “Modified Take %” (the x-axis of the chart) was not used by the Liquidity Profiling service to categorize traders. Rather, the service used an altogether different metric. The chart therefore misrepresents both the metrics used by Barclays to classify traders in the dark pool, and the kind of trading taking place in the pool.

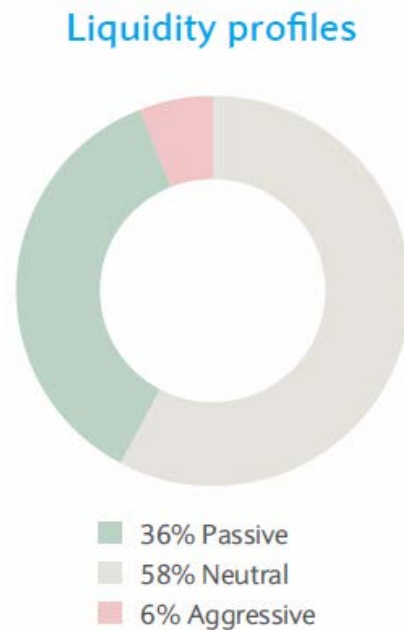
123. Immediately following the filing of the initial Complaint in this matter, Barclays removed the analysis from its website.

2. *Barclays Underrepresented the Amount of “Aggressive” Trading Activity in its Dark Pool*

124. As part of its effort to convince clients that it protected them from aggressive high frequency trading, Barclays issued marketing material that included representations purporting to show the low amount of aggressive trading activity in its dark pool.

125. One such analysis was in a widely-disseminated document intended for institutional clients titled *Liquidity Profiling – Protecting Clients in the Dark*.

126. First released in early 2013, Barclays claimed in this document that the trading in its dark pool was only “9% aggressive.” In March 2014, Barclays issued revised marketing materials that were even more favorable for Barclays – asserting that its dark pool was comprised of only 6% aggressive activity:



Barclays used this marketing material at least through April 2014.

127. Barclays believed the above representations to be material to clients and potential clients.

128. Those figures were false. Contrary to what Barclays represented to clients, potential clients, and to the investing public, Barclays knew that there was significantly more “aggressive” activity in Barclays’ dark pool than either 6% or 9%.

129. For instance, in August 2012, Barclays conducted an “Execution Aggressiveness” analysis of the trading in its dark pool. That analysis, contained in a document circulated via email to key personnel in the Equities Electronic Trading Division, found that between 25% and 30% of all activity in the dark pool was, in Barclays’ own terminology, “aggressive.”

130. On August 6, 2013, Barclays again conducted an “Execution Aggressiveness” analysis of the trading in Barclays’ dark pool. That analysis found that 32% of the activity in the dark pool was “aggressive.” Below is an excerpt from the document reflecting the findings of Barclays’ analysis (highlighting added):

By Execution Aggressiveness	
%Passive	34%
Take	17%
Provide	83%
%Mid	34%
Take	50%
Provide	50%
%Aggressive	32%
Take	86%
Provide	14%

131. Also included in the “Execution Aggressiveness” analysis document was a breakdown of traders in Barclays’ dark pool. Eight of the ten largest traders in the pool by volume of shares executed were known high frequency trading firms.

132. Those numbers remained consistent over late 2013 and early 2014. For instance, in March 2014, Barclays was engaged in discussions with a prominent high frequency trading firm wherein Barclays itself categorized approximately 25% percent of the orders taking

liquidity in its dark pool as aggressive. In an internal document collecting the information received from Barclays, that firm summarized the data provided to it by Barclays, and concluded that the trading activity in Barclays' dark pool was "50% good, 50% aggressive."

133. In May 2014, Barclays' own analysis again determined that over 30% of all activity in the dark pool was, in Barclays' own words, "Aggressive."

E. "Liquidity Profiling," as Applied by Barclays, Does Not Protect Barclays' Clients from Predatory High Frequency Trading Tactics

134. Barclays' efforts to convince clients, potential clients, and the investing public of the safety of trading in its dark pool relied, in large part, on a service Barclays calls "Liquidity Profiling."

135. "Liquidity Profiling" purportedly allowed Barclays' clients to determine the types of counterparties with which they traded in Barclays' dark pool. Barclays represented that Liquidity Profiling would monitor every trade in the dark pool, objectively and fairly grade traders by how "toxic" or "aggressive" their trading activity was, and allow clients to decline to trade with toxic traders in the pool.

136. Barclays' Liquidity Profiling service ostensibly worked by grouping traders in the dark pool into six categories based on trading behavior, ranked 0 to 5. In the "0" and "1" categories were those traders conducting the most aggressive, predatory trading activity; in the "4" and "5" categories were those traders conducting the safest, most passive, long-term-investor-like trading activity. Participants in Barclays' dark pool were told that they could disable their orders from interacting with traders falling into any of the various categories – in particular, clients could opt-out of trading with those counterparties identified by the Liquidity Profiling service as engaging in aggressive high frequency trading strategies.

137. In a July 31, 2012 “Sales Trader Education” seminar given to Barclays sales personnel by Jacek Janczewski, head of dark pool operations, and Anthony Pallone, head of Sales for the division, Barclays’ sales staff was instructed to tell clients and potential clients that Liquidity Profiling uses “objective criteria” to “proactively monitor [the dark pool]” and that Barclays “regularly evaluate[s] client profiles.” Janczewski and Pallone instructed sales staff to represent to clients and potential clients that Barclays was “effectively ‘policing’ the pool.”

138. Janczewski and Pallone further instructed sales staff to represent to clients and potential clients that Liquidity Profiling worked “in a systematic, transparent, and fair way,” giving “customers the choice of interacting with as much or as little [aggressive liquidity] as they want . . . Customers can then opt in or out of interacting with as much of this spectrum as they like.”

139. Barclays made similar representations in numerous responses to client questionnaires throughout 2012 and 2013. Barclays represented that it “monitor[s] client flow in LX on a daily basis,” and “runs surveillance reports every week *to make sure that there is no toxic flow in the book*” (emphasis added). Barclays made that particular representation in written documents provided to clients on more than a dozen occasions in 2012 and 2013.

140. In a range of other documents and communications from 2012 until at least the filing of the initial Complaint in 2014, Barclays represented to clients, potential clients, and the public that Liquidity Profiling allowed it to “hold [traders] accountable” if their trading was “aggressive,” “predatory,” or “toxic.” For instance:

- On its public website from 2012 until 2014, Barclays represented that “our team proactively monitors the behavior of individual participants and *quickly responds with corrective action when adverse behavior is detected*” (emphasis added);
- In pitchbooks provided to clients and potential clients in 2013 and 2014, as well as in written materials accompanying oral presentations to individual clients during the same time period, Barclays represented that Liquidity Profiling “improve[s] the

overall quality of [Barclays' dark pool because] High-alpha takers [*i.e.*, high frequency traders] can be held accountable . . . transparency means that aggressive flows will be quickly identified by the Barclays ATS team”;

- On March 8, 2013, the online magazine *Markets Media* published an interview with William White, Barclays' Head of Electronic Trading. White stated that Barclays' dark pool “is an integral part of our electronic trading offering, providing clients with enhanced execution quality . . . built on transparency and preventing information leakage. We have built in safeguards to manage toxicity, and to help our institutional clients understand how to manage their interactions with high-frequency traders.” That article remains available online.
- On March 14, 2013, online magazine *Markets Media* published an interview with White, wherein White represented that “[b]y identifying aggressive behavior, ***we can take corrective action with clients who exhibit opportunistic behavior in the pool.***” That article remains available online.
- On June 6, 2013, online magazine *Hedgeweek* published an interview with White, wherein he represented that through Barclays' Liquidity Profiling service “we are able to restrict HFTs interacting with our clients [and] we're getting the better half of their order flow (*i.e.* higher quality liquidity) such as hedges or low impact positions . . . When you're watching behavior to that degree, behavior changes. If an end user has been delivering low-rated flow, we tell them ‘***Either change it, or don't send it here.***’” He further represented that Liquidity Profiling lets Barclays “make sure that we have very good participants in our pool” (emphasis added).

141. Similarly, in a presentation made to an audience on June 18, 2012, and which is posted on the Internet, White stated that “if [traders in the pool] are very aggressive then ***we can see no fundamental benefit to our overall platform. We need to be able to sit down with that client and either change their behavior or eliminate them from our liquidity pool***” (emphasis added). That presentation remains available online.

142. On March 28, 2014, Eric Schlanger, Barclays' Head of Equities in the Americas distributed “Internal Q&A and Talking Points on Barclays Electronic Trading and Order Handling Practices.” The document, marked “For Internal Use Only,” notes that given “recent press on market structure [and the] NY Attorney General's comments on HFT . . . we have an opportunity to engage with clients about how we think about electronic trading and best execution” (emphasis omitted). Schlanger instructed employees to represent to clients that

Barclays “[i]nvented Liquidity Profiling to police trading behaviour” in the dark pool, and to tell clients that Barclays “can deny access to predatory participants.” Schlanger instructed employees to represent that “Liquidity Profiling encourages passive/benign liquidity provision,” and that Liquidity Profiling “manages toxicity within the pool without limiting access to potentially beneficial liquidity.”

143. That message was repeatedly conveyed to clients, potential clients, and the investing public by senior Barclays personnel in written and oral communications from 2012 to 2014. For instance, in the June 18, 2012 presentation by White noted above, White stated that “where we see suspect activity we’ve gone out proactively to sit down with clients and *we’ve actually shut them off from the firm.*” Video of that presentation remains available on the Internet.

144. Barclays viewed the Liquidity Profiling service a key reason why its dark pool had grown so large between 2011 and 2014. On March 28, 2014, Eric Schlanger, Barclays’ Head of Equities in the Americas distributed “Internal Q&A and Talking Points on Barclays Electronic Trading and Order Handling Practices.” That document notes that clients might ask “Why has LX grown so much over the last 3 years?” In response, Barclays urged its Sales staff to note that “Liquidity Profiling has improved quality of flow, giving clients more confidence to interact with LX.”

145. Barclays believed the above representations to be material to clients and potential clients.

146. Barclays’ claims about Liquidity Profiling were false. In truth, the service offered little or no benefit to Barclays’ clients, because (i) Barclays did not actually police or punish bad trading behavior; (ii) Barclays failed to regularly update the profiles of traders in its dark pool; (iii) Barclays altered the profiles of certain predatory traders when it benefitted Barclays to do

so; (iv) Barclays did not apply the Liquidity Profiling service to the bulk of orders submitted to the dark pool; and (v) senior Barclays employees knew that the service was of little benefit to institutional investors.

1. *Barclays Did Not “Police” Its Dark Pool*

147. Contrary to Barclays’ claim that it uses Liquidity Profiling to “police” its dark pool and would “*refuse a client access*” if that trader’s activity became toxic, and contrary to its representations to dozens of clients throughout 2012 and 2013 that it “monitor[s] client flow in LX on a daily basis . . . *to make sure that there is no toxic flow in the book,*” (emphases added), Barclays never prohibited a single firm from participating in its dark pool, no matter how toxic or predatory its activity was determined to be.

148. Indeed, Barclays knew about high levels of toxic activity occurring in its dark pool, including latency arbitrage, and was aware of which firms were responsible, yet never took steps to “hold [traders] accountable,” as it represented it would.

149. For example, on January 16, 2014, senior leaders in the Equities Electronic Trading Division were provided an analysis identifying over a dozen major high frequency trading firms engaged in significant trading activity in Barclays’ dark pool. That analysis discussed those firms’ history of sending “toxic” order flow. One high frequency trading firm, Hudson River Trading, was described in the analysis as “*historically . . . very toxic.*” Another firm, Sun Trading LLC, was described as having “[trading activity that] is *very toxic, and the client is up-front about this.*” Another firm, Getco, “is in [the most toxic] bucket 0 every week and will very likely stay there for a long time.” GTS Securities LLC was described as having “[*k*]nown latency arbitrage flow” in the pool (emphases added). Barclays never denied any of those firms (or any others) access to its dark pool.

150. In its memorandum of law in support of its motion to dismiss the initial Complaint in this action, Barclays asserted to the Court that White's June 18, 2012 claim to have "sat down" with multiple clients and "shut them off from the firm" was true. Barclays asserted that in the days before White's comments, Barclays had in fact shut off a high-frequency trading firm for abusive trading practices. Barclays appended redacted documents to its brief, purporting to establish that Barclays prohibited that firm from trading in the pool.⁵

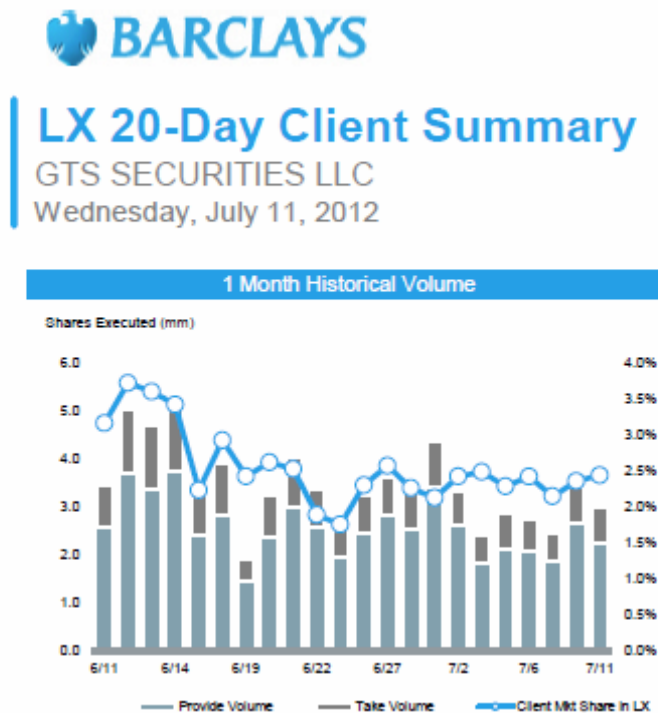
151. Barclays' assertions in its brief were false.

152. On Friday, June 8, 2012, a Barclays employee determined that a high frequency trading firm called GTS Securities LLC ("GTS") was sending a massive volume of orders to the dark pool, putting stress on Barclays' computer systems. Such behavior typically suggests that the trader is engaging in abusive conduct. In response, Jacek Janczewski, head of Barclays' dark pool operations, emailed GTS and asked them to "see what you can do" to lower the number of orders being sent. GTS responded via email, promising to "cut down our total Barclays traffic by approximately 1/3" on the next trading day, Monday, June 11, 2012.

153. GTS never was never prohibited from trading in Barclays' dark pool for any period of time. According to an internal analysis conducted by Barclays in July 2012, GTS continued to trade millions of shares in the dark pool on every day trading day following the June 8, 2012 email conversation cited in Barclays' brief. The following is an excerpt from that

⁵ On page 12 of its Reply Memorandum of Law in Support of the Motion to Dismiss, Barclays wrote: "[the NYAG's] Opposition challenges a statement from [White's June 8, 2012] presentation that 'where we see suspect activity we've gone out proactively to sit down with clients and we've actually shut them off from the firm.' **The documentary evidence demonstrates that this was a true statement, referring to a specific client interaction that occurred just days before the presentation. Ten days prior to the presentation, Barclays detected abnormal order flow from a client and instructed the client to stop trading on LX.**" *People v. Barclays Cap. Inc., et al.*, Index No. 451391/2014 (Docket No. 37, filed Oct. 7, 2014) (emphasis added).

analysis, showing that GTS traded millions of shares in Barclays' dark pool on every trading day during the month immediately following June 8, 2012:



154. Also, in a letter dated May 2, 2014, responding to a subpoena issued by the Office of the Attorney General, Barclays stated that “Barclays has not prohibited any firm from participating in LX.”

155. As such, White’s comments on June 18, 2012, and Barclays’ assertions in its brief about removing GTS from the pool, were false.

156. In addition, senior Barclays employees admitted to each other privately that Barclays was not in fact “policing” the dark pool in the manner represented to the public.

157. In an email dated August 22, 2012, Jacek Janczewski, head of Barclays’ dark pool operations, stated to others in the division that while “the strongest selling point to institutions . . . is that we are ‘policing’ our dark pool,” in fact Barclays’ “policing” consisted mostly of categorizing traders in the 0-5 buckets, not removing toxic traders from the pool, and so “very

few institutions” would be protected by Liquidity Profiling. Janczewski noted that “we will need to more actively look for abusive trading patterns” to hold traders accountable for toxic order flow.

158. As noted above, though, at no point after Janczewski’s comments did Barclays instruct a trader to alter abusive trading activity, much less bar an abusive trader from the pool.

2. *Contrary to its Representations that it Would Proactively and Regularly Monitor Trading Activity, Barclays Did Not Regularly Update Ratings*

159. Despite representations to clients, potential clients, and the investing public that it would “proactively monitor” its pool and “regularly evaluate client profiles,” Barclays did not regularly update the ratings of traders monitored by the Liquidity Profiling service, meaning that traders were often categorized in ways that did not reflect their aggressive trading activity in Barclays’ dark pool. Failing to properly rate traders gave Barclays’ other clients a false understanding of whether predatory high frequency traders were likely to act as counterparties to their trades.

160. According to a former senior employee in the Equities Electronic Trading Division, updates to Liquidity Profiles were infrequent and inconsistent, and participants “could be and would be in the wrong tiers for months before [re-]calibration happened.”

161. In an internal document dated December 13, 2013, Barclays recognized that Liquidity Profiling “reviews were sporadic and sometimes not performed” for months at a time. “As a result, Liquidity Profiles may become stale and inaccurate,” which would result in “clients . . . not getting the quality executions expected.”

3. *Barclays Altered Trader Ratings, Contrary to its Representations that Liquidity Profiling was “Objective”*

162. Barclays applied “overrides” to a number of traders in the dark pool, assigning “safe” Liquidity Profiling ratings to certain traders that should have been rated as toxic based on objective evaluation of their trading behavior.

163. For instance, an internal, proprietary trading desk called Barclays Capital Market Making, which engaged in high-speed, high-order volume trading amounting to high frequency trading, was granted an override. That trading desk was evaluated as a “0” or “1” trader in the Liquidity Profiling system based on its actual trading behavior (and, as such, should have been blocked by those other trades that had chosen to avoid trading with aggressive traders), but instead was categorized as a “4.” That “override” had the effect of making Barclays proprietary trading desk appear to be a safe trading partner to Barclays’ clients, when in fact it was not.

164. Other overrides were applied to firms for whom Barclays’ acted as a broker, regardless of how toxic or predatory their activity was. Internally, Barclays justified the preferential treatment of its brokerage clients on the basis that it was in Barclays’ economic interest to keep those firms trading as much as possible with Barclays. According to documents obtained by the Office of the Attorney General:

- In an October 25, 2012 email exchange, the Barclays employee responsible for overseeing Liquidity Profiling noted that one trader using Barclays as a broker “is sending us HF [high frequency] flow. It is fairly toxic and just by the numbers they should be in bucket 2.” This employee noted that “all institutions [that are Barclays’ clients] end up in bucket 4 or 5, *regardless of what their flow is like, because they use our products.*”
- On March 11, 2013, Barclays discovered that a one of its largest traders by volume, which was also a major brokerage client, was conducting trading activity in the dark pool that Barclays recognized as “toxic.” Nevertheless, the firm was granted an override to a “safe” bucket. According to an internal email sent to multiple senior employees in the division, “the [Liquidity Profiling] report says they deserve to be in bucket 0 or 1, but [they will be] kept in bucket 4 because we are losing money on

that flow. If we put them in bucket 0 the blocks would mean *less would execute in LX and we would lose more money.*”

- On January 16, 2014, the Liquidity Profiling tool detected that a trader in the dark pool began exhibiting toxic trading activity, such that by objective measures it should have been moved from the “safe” bucket 4 to the “toxic” bucket 1. Jacek Janczewski, head of dark pool operations, overrode the reclassification and kept the client in the “safe” bucket 4.

165. Allowing traders known to be “toxic” to be put in the “safe” buckets was contrary to Barclays’ representations about how Liquidity Profiling protects traditional investors by allowing them to determine the kinds of counterparties with whom they trade.

166. Internally, Barclays Compliance personnel recognized that “overrides” were problematic. In an internal document dated December 13, 2013, Barclays found that management in the Equities Electronic Trading Division did not “formalise a control framework for monitoring customer trading patterns (Liquidity Profiling), including . . . documentation and escalation requirements for profile overrides.” Barclays determined that this could “give the appearance that certain clients are shown favoritism during the profiling process.”

4. *Barclays Misrepresented the Trading Activity to Which Liquidity Profiling Applied*

167. Barclays falsely represented to clients that Liquidity Profiling applied to significant portions of the trading activity in Barclay’s dark pool, when in fact Liquidity Profiling did not apply to such trading activity.

168. As alleged in paragraphs 58-69, above, Barclays falsely represented to clients that Liquidity Profiling applied to orders submitted to the dark pool via Barclays’ algorithms.

169. Furthermore, Barclays knew, but did not disclose to clients and potential clients, that Liquidity Profiling only protects traders when they *provide* liquidity (*i.e.*, post an order to the dark pool). Liquidity Profiling does not protect traders when they *take* liquidity (*i.e.*, accept

an already-posted order). As such, a significant portion of Barclays' clients' traders are completely unprotected by Liquidity Profiling from interaction with aggressive or toxic traders.

170. That undisclosed limitation was contrary to Barclays' representations that Liquidity Profiling allowed clients to choose the counterparties with which they traded – regardless of whether that counterparty is “providing” or “taking” liquidity.

5. *Senior Barclays Employees Knew That Liquidity Profiling Offered Little Protection to Institutional Investors*

171. Senior employees were aware that Liquidity Profiling was of limited use to institutional investors, despite being marketed by Barclays as the cornerstone of the protections offered to its clients.

172. For instance, in an email dated August 22, 2012, Jacek Janczewski wrote to his colleagues that “The major knock on profiling is that it has produced little tangible gain from an institutional perspective.”

173. Similarly, in an internal document dated December 2013, Barclays recognized that “Liquidity Profiling reviews may not be completed for all clients, may rely on inaccurate information and results and rationale for profiling changes may not be evidenced; leading to reputational damage as the service . . . may not function as advertised to clients.”

174. As stated by one former Barclays director in the Equities Electronic Trading Division, Barclays “purport[s] to have a toxicity framework that will protect you when everybody knows internally that that thing is done manually with outliers removed and things are classified [only] if they feel like it.” Another former director in the division described Liquidity Profiling as “a scam.”

C. Contrary to its Representations, Barclays Did Not Protect Clients from High Frequency Traders; In Reality, Barclays Catered to High Frequency Traders

175. As discussed herein, Barclays engaged in a course of conduct from 2011 to 2014 to convince clients and potential clients that its electronic trading services – including its algorithms, smart order router, and dark pool – were designed and operated to offer protection from aggressive or predatory high frequency trading. Barclays represented that investors should entrust the routing and execution of their equities trades to Barclays because Barclays offered institutional investors the tools necessary to avoid, as much as possible, interactions with aggressive high frequency trading.

176. For example, William White, Head of Electronic Trading, told an audience on June 18, 2012 (in a presentation that remains posted on the Internet): “I could talk to twenty different clients and I’m going to get the same question: ‘How are you protecting me from high frequency trading?’” White continued:

[T]here are bad players in the high frequency [context], they’re out there. But in our seat it’s understanding what they are, how to put our clients in a position that we’re going to minimize the impact from it ... The main question we’re getting from the clients is how are you protecting me? How are you understanding the market structure? How do you know where possibly predatory activity is living?

177. White’s response to clients – consistent with Barclays’ representations in numerous written materials and oral communications with clients and potential clients from 2011 to 2014 – was that Barclays’ electronic trading products and service were valuable because “we are able to restrict HFTs interacting with our clients.”

178. Barclays believed the above representations to be material to clients and potential clients.

179. In truth, and as set forth in detail throughout this Amended Complaint, Barclays misrepresented how it operated its algorithms, its smart order router, and its dark pool. Each of those misrepresentations had the effect of obscuring how little Barclays was doing to protect its institutional clients from aggressive high frequency traders – and, in reality, Barclays was catering to those high frequency traders.

180. In addition to the misrepresentations to clients and potential clients outlined above, Barclays supplied high frequency trading firms with systematic advantages over traditional investors trading in its dark pool. As described by one former senior-level Director within the Equities Electronics Trading Division, “Barclays was doing deals left and right with high frequency firms to invite them into the pool to be trading partners for the buy side. So the pool is mainly made up of high frequency firms.” Additionally, the director explained: “[T]he way the deal would work is [Barclays] would invite the high frequency firms in. They would trade with the buy side. The buy side would pay the commissions. The high frequency firms would pay basically nothing. They would make their money off of manipulating the price. Barclays would make their money off the buy side. And the buy side would totally be taken advantage of because they got stuck with the bad trade . . . this happened over and over again.”

1. Barclays Disclosed Information Regarding the Workings of its Dark Pool to High Frequency Traders That Was Not Generally Available to Others

181. On numerous occasions since 2011, Barclays disclosed detailed, sensitive information to high frequency trading firms in order to encourage those firms to increase their activity in Barclays’ dark pool. That information, which was not generally supplied to other clients, included data that helped those firms maximize the effectiveness of their aggressive trading strategies in the dark pool. The information included:

- The routing logic of Barclays’ order router, including the percentage of Barclays’ internal order flow that was first directed into its own dark pool;

- A breakdown of trades executed in the dark pool by participant type (*e.g.*, percentage of orders from institutional investors, high frequency traders, etc.); and
- A breakdown of trades executed in the dark pool by “toxicity” level (*see* paragraph 135, above, for discussion of Liquidity Profiling “toxicity” levels).

182. Barclays shared this information in order to attract high frequency trading activity to its dark pool, profiting from that activity and increasing the market share of its dark pool.

183. For instance, on May 13, 2013, Barclays was approached by a prominent high frequency trading firm called Tower Research Capital LLC, seeking detailed, operational information regarding Barclays’ dark pool. Tower informed Barclays that “we have our largest trading team . . . looking to get into the dark pool space,” and “are try[ing] to get more teams connected to your dark pool.” Barclays readily provided the requested information.

184. Similarly, on July 3, 2013, Barclays was approached by another prominent high frequency trading firm called Sun Trading LLC with questions regarding the dark pool’s “functionality, mechanics, and general color.” The firm stated that it wanted to make sure that it was “not missing any opportunities.” Barclays provided the information requested.

185. In a March 2014, response to questions from Sun Trading about how it routes client orders, Barclays stated that apart from minor exceptions, “everything goes to [Barclays’ own dark pool] first.” Similarly, on July 9, 2014, Barclays told another high frequency trading firm called Virtu Financial, LLC that approximately 90% of all orders “are first directed into the dark pool.”

186. Barclays gave institutional investors different answers when asked the same types of questions. For instance, in a May 7, 2014 email, a representative from a major institutional investor asked Sarah Naegele, Head of Sales for the dark pool, the following: “when a routable order hits your [smart order router], my assumption is that you’d give it some time to match” in

the dark pool first. Rather than telling this institutional investor the truth (that such orders were indeed routed first to Barclays' dark pool, which is what Barclays told several high frequency traders), Naegele implied that the orders were not, in fact, routed preferentially to Barclays' pool.

187. Having been apprised later that same day of this institutional investor's belief that Barclays was routing orders first to its own dark pool, David Johnsen instructed Jacek Janczewski to insert a slide into an upcoming presentation to be delivered to an industry conference, in order to convey that Barclays was not routing trades preferentially to itself first – despite the fact that Barclays was doing exactly that.

2. *Barclays Took Other Steps to Make its Dark Pool Attractive to High Frequency Traders*

188. Despite Barclays' representations that it operates its dark pool "transparently" in order to protect clients from aggressive high frequency trading activity, Barclays has taken a number of actions (beyond those already discussed above) to invite high frequency traders to trade, and trade aggressively, in its dark pool. For instance:

- Barclays charges high frequency trading firms little or nothing to trade in its dark pool. For instance, Barclays' charges the two largest participants in its dark pool – both of which are high frequency trading firms – virtually nothing to execute trades. Since at least 2011, these firms were charged nothing per share when posting orders, and between \$0.0002 and \$0.0005 per share when taking available orders.
- Barclays allows high frequency traders to "cross-connect" to its servers. Several dozen of the most well-known and sophisticated high frequency trading firms in the world are cross-connected with Barclays, allowing them to take advantage of Barclays' non-high frequency trading clients, by getting a speed advantage over those slower-moving counterparties.
- While Barclays represented that it used ultra-fast "direct data feeds" to process market price and trade data in order to deter latency arbitrage by high frequency traders in its dark pool, Barclays in fact processed that market data so slowly as to allow latency arbitrage. Internal analyses confirmed that Barclays' slow processing of market data allowed high frequency traders to engage in such predatory activity.

189. Barclays routinely solicited the input of high frequency trading firms, and worked with those firms to ensure that they were able to conduct aggressive trading in the dark pool.

190. For instance, in May 2013, Barclays personnel made in-person visits to a number of high frequency trading firms in order to solicit input from those firms and maximize their participation in the dark pool. According to notes taken of those visits, which were circulated to senior Barclays personnel, Barclays knew that these firms would conduct the very kinds of abusive activity in the dark pool that Barclays promised its other customers it would remove from the pool. Yet, Barclays encouraged such activity anyway. For instance:

- High frequency firm Allston Trading told Barclays that it would attempt only to “add” liquidity to the pool, which “may allow more aggressive behavior”;
- High frequency firm Sun Trading noted that their cost structure with Barclays “was free now, and [trading against] retail flow appears to be the best opportunity to monetize our flow.” Sun noted that the introduction of Liquidity Profiling had actually been positive for Sun, in that it could “lead to additional volume gain”;
- High frequency firm Getco discussed how it was “leveraging Liquidity Profiling” in order to ensure it traded only with traditional investors. Barclays and Getco discussed the possibility of creating a “Potential 6th Bucket” of “benign flow” from retail investors “which Barclays could monetize” by selling access to such flow to high frequency trading firms.

191. Barclays maintained an especially close relationship with Tradebot, a high frequency trading firm known to Barclays as one of the most toxic traders in its pool, and the firm which Barclays removed from its analysis of trading in the dark pool (*see* paragraphs 104-113, above). For instance, in document dated December 15, 2011, Barclays provided Tradebot with a detailed breakdown of its trades in the dark pool. In a section of that document entitled “Takeaways for Tradebot,” Barclays noted that “Tradebot . . . falls into the Aggressive bucket” of Liquidity Profiling, but nevertheless Barclays would “Work with Tradebot to enable new Liquidity Profiling settings with the goal of . . . Tradebot committing more capital to trade against institutional order flow.”

192. According to a March 8, 2012 internal email, Barclays employees worked closely with Tradebot on “ramping up” Tradebot’s activity in sub-one-dollar stocks that traded in Barclays’ pool, despite knowing that Tradebot’s behavior when trading in those securities was “*toxic as usual*” (emphasis added). Part of Barclays’ inducement to Tradebot was to waive fees on such trades – something that Barclays generally did not do with traditional, institutional investors.

193. On January 3, 2013, David Johnsen met with representatives from Tradebot regarding its request to lower its already-favorable pricing on additional trading. In “talking points” notes written to himself prior to the meeting, Johnsen noted that Tradebot is “already our largest toxic client,” and that Barclays “already dropped [Tradebot’s] rate 40% for the month.” Johnsen further noted that in his previous employment with Goldman Sachs, “there was real pressure to boot [Tradebot]” from the dark pool because it conducted abusive latency arbitrage in the pool, but that Tradebot had the attitude that “we took care of you then . . . need you to return the favor now.”

194. In April 2014, multiple senior employees in the Equities Electronic Trading Division worked with Tradebot to find ways to help it avoid being classified as “toxic” by Barclays’ own Liquidity Profiling service, without fundamentally changing the kinds of aggressive trading practices in which Tradebot was engaged. In a series of emails in March and April 2014, Barclays employees discussed ways Tradebot could modify its trading at the margins in order to avoid being blocked by institutional traders who sought to avoid trading with aggressive counterparties. Jacek Janczewski, head of dark pool operations, offered to “help [Tradebot] go through this data and dig into the details as needed.”

195. On April 29, 2014, Janczewski and Neagele engaged in a follow-up email exchange, in preparation for an in-person meeting with Tradebot personnel. Janczewski

proposed that Barclays alter how it cleared certain of Tradebot's trades, so as to allow Tradebot to avoid certain of its flow being rated as "toxic" by the Liquidity Profiling system. Janczewski wrote to Tradebot, in relevant part: "Let me know how best to proceed. If these options do not work for you, we can explore other ways to do this. Sorry for the hoops to jump through here."

196. Working closely with such a large and toxic trader was at odds with Barclays' representations to its non-high frequency clients that it would "police" its dark pool and help "protect" traditional clients from aggressive high frequency trading.

197. In sum, Barclays' courting of aggressive high frequency traders was contrary to Barclays' representations that it was working to "protect" clients "in the dark" from aggressive high frequency trading. As described by one former senior Barclays Director: "there was a lot going on in the dark pool that was not in the best interests of clients. The practice of almost ensuring that every counterparty would be a high frequency firm, it seems to me that that wouldn't be in the best interest of their clients . . . It's almost like they are building a car and saying it has an airbag and there is no airbag or brakes."

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Martin Act Securities Fraud – General Business Law §§ 352 *et seq.*)

198. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

199. The acts and practices of Defendants alleged above violated General Business Law §§ 352 *et seq.*, insofar as such acts, practices, misstatements, and omissions employed deception, misrepresentations, concealment, suppression, fraud, and false promises regarding the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of securities.

200. Barclays' violations of the Martin Act are not predicated on violation of any federal law or regulation, nor do those violations stem from any failure to disclose any information pursuant to federal laws or regulations requiring such disclosure.

SECOND CAUSE OF ACTION
(Deceptive Acts or Practices in the Conduct of
Business, Trade, or Commerce – General Business Law § 349)

201. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

202. The acts and practices of Defendants alleged above violated General Business Law § 349, insofar as such acts, practices, misstatements, and omissions constituted deceptive acts or practices in the conduct of business, trade or commerce or in the furnishing of a service in this state.

THIRD CAUSE OF ACTION
(Persistent Fraud and Illegality – Executive Law § 63(12))

203. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

204. The acts and practices of Defendants alleged herein constitute conduct proscribed by § 63(12) of the Executive Law, in that Defendant Barclays (a) engaged in repeated fraudulent or illegal acts or otherwise demonstrated persistent fraud and (b) repeatedly violated the Martin Act and General Business Law § 349 in the carrying on, conducting or transaction of business within the meaning and intent of Executive Law § 63(12).

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Providing an accounting of all fees, revenues, or other compensation received, directly or indirectly, from Defendants' operation of its Equities Electronic Trading Division, and the various business units thereof;

B. Directing Defendants to pay damages caused, directly or indirectly, by the fraudulent and deceptive acts and repeated fraudulent acts and persistent illegality complained of herein plus applicable pre-judgment interest;

C. Directing Defendants to disgorge all amounts obtained in connection with or as a result of the violations of law alleged herein, all moneys obtained in connection with or as a result of the fraud alleged herein, and all amounts by which Defendants have been unjustly enriched in connection with or as a result of the acts, practices, and omissions alleged herein;

D. Directing that Defendants make restitution of all funds obtained from investors in connection with the fraudulent and deceptive acts complained of herein;

E. Enjoining Defendants from engaging in any ongoing and future violations of New York law;


F. Directing such other equitable relief as may be necessary to redress Defendants' violations of New York law;

G. Directing that Defendants pay the State's costs and fees; and

H. Granting such other and further relief as may be just and proper.

Dated: New York, New York
January 21, 2015

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