Securities Regulation Daily Wrap Up,CORPORATE GOVERNANCE—Barclays Publishes External Review of Its Business Conduct,(Apr. 5, 2013)

By Mark S. Nelson, J.D.

Barclays PLC recently published the report of an independent, external review of its own business conduct that had been commissioned by the bank's board. The review said Barclays had acted over several decades to counter rising international competition and took advantage of easy liquidity to further grow its investment bank in the run-up to the 2008 global financial crisis.

According to the review, these elements fed an internal culture typified by both "edginess" and innovation but which ultimately misallocated risks among the bank's shareholders and its employees. The reviewer, Anthony Salz, made numerous recommendations and urged Barclays to publicly show its progress in meeting action items (Salz Review: An Independent Review of Barclays' Business Practices, April 3, 2013).

LIBOR-EURIBOR. The review said that Barclay's was the first bank to be fined for its role in allegedly manipulating LIBOR, but it was not the only bank implicated, and Barclays has cooperated with regulators. The review, however, relied on findings made by the UK Financial Services Authority (FSA) and did not comment on matters still under legal privilege.

According to the review, the FSA found that Barclays' allegedly bent its LIBOR and EURIBOR submissions to improve its trading positions based on input from its traders who specialized in interest rate derivatives. The FSA noted that Barclays allegedly tried to sway other banks' EURIBOR submissions. Barclays, said the FSA, allegedly made fewer LIBOR submissions during the financial crisis to assuage managers who aimed to duck bad publicity.

The FSA also said Barclays had sub-par internal systems to police its LIBOR and EURIBOR submissions before June 2010. Barclays allegedly failed to take sufficient corrective action despite reports about questionable LIBOR practices made to the compliance function within its investment bank.

The review further observed that Barclays' LIBOR-EURIBOR issues significantly involved its investment bank. Here, the review questioned whether alleged ethical and other lapses were more prevalent on trading floors than elsewhere within Barclays.

Lastly, the review noted that the FSA was concerned about Barclays' LIBOR submissions during the worst of the financial crisis between September 2008 and May 2009. Specifically, the FSA worried that Barclays' senior managers could have asked that its LIBOR submissions be altered

to give an unduly rosy image of the bank's financial stability. The Salz Review, however, did not make any definitive findings on this matter.

Executive Pay. The Salz Review noted that 'financial contribution" was a key driver of Barclays' discretionary bonuses. This emphasis led to a disconnect between the bank's pay schemes and its risk management functions. Specifically, Barclays' investment bank developed an 'entitlement culture' towards pay. As a result, Barclays' pay schemes were complicated, routinely 'gamed,' overly-focused on short-term results, and too 'generous.'

The review cited a 2009 publication by the Financial Stability Forum which observed that many banks failed to see a link between how their executives and other employees are paid and the risk management function. The Salz Review noted that risk metrics rarely informed Barclays' pay decisions. According to the review, risk should be an integral part of banks' executive compensation plans.

The review also said now is a 'unique opportunity' to change pay practices at Barclays and potentially throughout the financial industry. The review made several recommendations for compensating top executives: (1) tie pay to talent and long-term results; (2) make discretionary bonuses more transparent and tie them to many 'balanced factors,' including nonfinancial performance; (3) grant long-term incentive plans (LTIPs) to fewer top executives and make LTIPs less complex, adjust LTIPs for risk, and emphasize 'group' results over individual performance.

Additionally, the review said that Barclays' compensation committee should adopt pay principles subject to 'validation' by the bank's board.

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Companies: Barclays PLC; Rothschild

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