

Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION— S.D.N.Y: Barclays investors advance LIBOR claims after remand, (Oct. 21, 2014)

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By Matthew Garza, J.D.

Investors in British bank Barclays have succeeded in moving past a motion to dismiss securities fraud claims filed against the bank for manipulating the London Interbank Offered Rate (LIBOR). The latest ruling comes after the Second Circuit found loss causation pleadings sufficient and reversed the decision of the U.S. District Court in Manhattan to dismiss the suit. The suit alleged that Barclays violated Exchange Act 10(b) when it submitted artificially low rates between August 2007 and January 2009 to enhance the view of its financial results and boost its stock price. Controlling person claims against CEO Robert Diamond and other senior executives also survived (*Carpenters Pension Trust Fund of St. Louis v. Barclays PLC*, October 20, 2014, Scheindlin, S.).

Scienter. The misstatements attributed to the bank related to understated LIBOR submissions by Barclay's London Money Market Desk, allegedly to boost the market's perception of the bank's financial health and avoid higher borrowing costs. The court agreed that claims that the submissions violated British Banking Authority rules was alone insufficient to allege scienter, but "repeated, long-term, and knowing submission of false rates" suggested much more than an intent to violate BBA rules.

The court considered the allegations contained in the non-prosecution agreement reached with the U.S. Department of Justice and the settlement agreement between Barclays and the CFTC, which were incorporated by reference into the complaint, and found that the pleadings showed "strong circumstantial evidence of conscious misbehavior or recklessness." The complaint also alleged that Diamond issued a directive to lower the LIBOR rate submissions.

The bank asserted that scienter was not adequately established because the bank was merely trying to correct a misimpression in the market and avoid "inaccurate, negative attention about Barclay's financial health." The practices were also industry wide, argued the bank. While these arguments may be persuasive to a jury, the court said at this stage they were sufficient to indicate a cogent inference of scienter at least as compelling as the completing inference of innocent intent. Scienter allegations against Diamond were also found to be sufficiently pleaded, and control person allegations against Diamond and two other executives survived.

The court's dismissal of the second amended complaint was covered in *Securities Regulation Daily* on May 14, 2013, and dismissal of the third amended complaint was covered June 14, 2013. The remand from the Second Circuit was covered on April 25, 2014.

The case is No. 12-cv-5329 (SAS).

Attorneys: David Avi Rosenfeld (Robbins Geller Rudman & Dowd LLP) for Carpenters Pension Trust Fund of St. Louis, St. Clair Shores Police & Fire Retirement System and Pompano Beach Police & Firefighter's Retirement System. Alanna Cyreeta Rutherford (Boies Schiller & Flexner LLP) for Barclays PLC, Barclays Bank PLC and Barclays Capital Inc.

Companies: Carpenters Pension Trust Fund of St. Louis; St. Clair Shores Police & Fire Retirement System; Pompano Beach Police & Firefighter's Retirement System; Barclays PLC; Barclays Bank PLC; Barclays Capital Inc.

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