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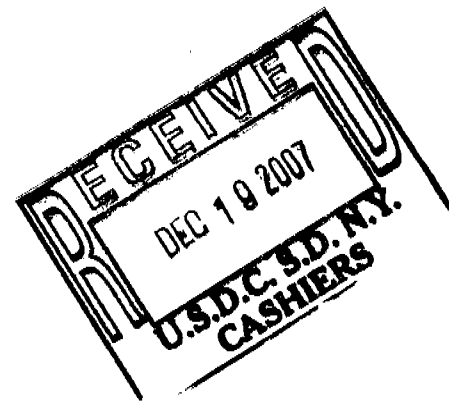
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BARCLAYS BANK PLC,  
  
Plaintiff,

v.

BEAR STEARNS ASSET MANAGEMENT INC.,  
RALPH CIOFFI, MATTHEW TANNIN, BEAR,  
STEARNS & CO. INC., and THE BEAR  
STEARNS COMPANIES INC.,  
  
Defendants.



Case No. \_\_\_\_\_

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Barclays Bank PLC ("Barclays"), brings this action against Bear Stearns Asset Management Inc. ("BSAM"), Ralph Cioffi, Matthew Tannin, Bear, Stearns & Co. Inc. ("Bear Stearns"), and The Bear Stearns Companies Inc. ("Bear Stearns Companies").

SUMMARY OF THE ACTION

1. This action arises from one of the most high-profile and shocking hedge fund failures in the last decade: In a matter of days in June 2007, Bear Stearns' and BSAM's reputation as one

of the premier credit investment franchises on Wall Street collapsed along with two Bear Stearns hedge funds, formerly with approximately \$20 billion in assets.

2. In late June 2007, *The Wall Street Journal*, *BusinessWeek* and others reported that the Securities and Exchange Commission opened an inquiry into the months-after-the-fact revisions to investment results announced by one of the funds and that fund's pricing practices. In early October, *The Wall Street Journal* reported that both funds are the subject of a criminal investigation by federal prosecutors in the Eastern District of New York. More recently, *The Wall Street Journal* reported that Ralph Cioffi also is under investigation for insider trading with one of the funds, as described below.

3. Barclays is the sole participating shareholder in – and thus has the sole direct exposure to – the master fund of the BSAM structure now under SEC and U.S. Attorney scrutiny, the Bear Stearns High-Grade Structured Credit Strategies Enhanced Leverage Master Fund, Ltd. (the “Enhanced Fund”).

4. Defendant BSAM established the structure at issue and is the investment manager for the Enhanced Fund. Defendants Cioffi, the Senior Portfolio Manager who led BSAM's High-Grade Structured Credit Strategies group, and Matthew Tannin, that group's Chief Operating Officer, were responsible for BSAM's creation and operation of the structure, its management of the Enhanced Fund, and its communications with Barclays. (Collectively, the three “BSAM Defendants.”)

5. It is now clear that the BSAM Defendants have long known that the Enhanced Fund and its underlying assets were worth far less than their stated values in the early months of 2007 – values that BSAM itself had determined in most instances – and were at great risk for further losses. The BSAM Defendants concealed the fund's falling net asset value (“NAV”) from

Barclays and investors in related feeder funds for as long as possible, instead of revealing the drop in value in, and the increased risk to, the Enhanced Fund, and instead of taking immediate and effective corrective action to correct the problems with the Enhanced Fund. This cover-up and failure to respond in accordance with BSAM's fiduciary duties to Barclays only caused greater losses and a more spectacular collapse of the Enhanced Fund.

6. Barclays entered into its transaction involving the Enhanced Fund, as set forth in detail below, only after extensive, one-on-one negotiations in which the BSAM Defendants held themselves out as having a proprietary, extraordinarily sensitive and effective risk management system and as having special access to pricing (or "marking") information and marking expertise that they would employ for the benefit of Barclays. Moreover, the BSAM Defendants promised to operate the Enhanced Fund with full transparency on performance and on pricing to Barclays. In addition, the BSAM Defendants and Barclays negotiated detailed investment restrictions, including by asset class and rating requirements, with which BSAM agreed to comply for the benefit of Barclays. In all these respects, the BSAM Defendants entered intentionally into a relationship in which Barclays placed trust and confidence in them. The BSAM Defendants made unique commitments to Barclays (that the BSAM Defendants did not make to feeder fund investors or to any other entity in the structure), upon which they knew that Barclays would rely.

7. Barclays now knows that from March 2006 into at least mid-June 2007, BSAM and Tannin deceived Barclays through a series of misrepresentations *first*, to secure Barclays' provision of its initial leverage for and financial stake in the "enhanced" fund structure; *second*, to secure a significant increase in Barclays' economic commitment to the structure in March 2007; and *third*, to deceive Barclays and keep it in the structure with ongoing positive reports about the Enhanced Fund's performance, even into mid-June 2007, until Barclays' losses had

snow-balled. BSAM and Tannin thus repeatedly and fraudulently misled Barclays and utterly failed to provide the total transparency regarding the Enhanced Fund that the BSAM Defendants promised to Barclays. BSAM and Tannin's deceptive acts were performed with Cioffi's knowledge, and pursuant to his approval and direction.

8. According to *The Wall Street Journal* and *BusinessWeek*, the SEC and U.S. Attorney's Office are investigating whether Cioffi engaged in insider trading in February or March 2007 when he withdrew millions of dollars that he had invested personally from the Enhanced Fund. These withdrawals occurred at the same time that Cioffi was publicly "making optimistic forecasts about the portfolio's prospects" and that BSAM and Tannin were attempting to secure Barclays' significant additional commitment to the Enhanced Fund structure.

9. As described in detail below, the BSAM Defendants failed to employ their purported and promised superior risk management system and the claimed expert pricing and hedging techniques to protect Barclays' exposure as leverage counterparty and sole participating shareholder in the Enhanced Fund. They also failed to exercise the duties of care they particularly owed to Barclays in their actions as the Enhanced Fund's investment manager; and they failed in their specific fiduciary duties to deal candidly and fairly with Barclays.

10. The BSAM Defendants and defendant Bear Stearns compounded the troubles of the Enhanced Fund by using it for Bear Stearns' and BSAM's selfish purposes, to the further detriment of Barclays and in further breach of the fiduciary duties uniquely owed to Barclays.

11. Indeed, Bear Stearns' and BSAM's transactions with the Enhanced Fund and the second collapsed fund, the Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd. (the "High-Grade Fund"), have been the subject of an investigation by the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts (the "Massachusetts Securities

Division”). As reported by *The Wall Street Journal* in mid-October 2007, the Massachusetts Securities Division was examining whether Bear Stearns entities improperly traded with the funds without required disclosure and approval by the funds’ independent directors and whether, as a result, “troubled securities positions were offloaded onto investors in the two funds, among other things.”

12. On November 14, 2007, the Massachusetts Securities Division filed an administrative complaint, Docket No. E-2007-0064 (the “Massachusetts Complaint”), against BSAM alleging violations of the Massachusetts Uniform Securities Act based on BSAM’s failure to obtain approval by unaffiliated directors for numerous related party transactions with Bear Stearns and/or other entities controlled or managed by BSAM, and its failure to disclose to investors in the High-Grade Fund and the Enhanced Fund that, in doing so, BSAM violated Section 206(3) of the Investment Adviser’s Act of 1940, as well as certain provisions of the offering materials for the funds. The Massachusetts Complaint alleges that hundreds of so-called “principal transactions” were processed without prior approval by unaffiliated directors. According to the complaint, 78.95% of principal transactions in 2006 were not approved by unaffiliated directors.

13. Bear Stearns and BSAM used the Enhanced Fund as a place to unload excessively risky or troubled assets that could not be sold to other investors at the prices paid by the Enhanced Fund. For example, at the very end of May 2007, BSAM caused the Enhanced Fund to buy large portions (with a price totaling almost \$500 million) of the six riskiest classes of securities in a deal that BSAM managed. BSAM did so despite the fact that the investment restrictions it had promised Barclays did not permit those securities to be held in the fund.

14. In addition, Bear Stearns, BSAM and Cioffi hatched a plan to make more money for themselves and further to use the Enhanced Fund as a repository for risky, poor-quality

investments by creating a new investment vehicle called Everquest Financial Ltd. (“Everquest”) – co-led by Cioffi and through which he stood to benefit personally. Their plan, as formulated, was intended to culminate in an initial public offering (“IPO”) of Everquest shares underwritten by Bear Stearns.

15. That plan collapsed along with the two BSAM funds in June 2007, amid outrage that Bear Stearns would take troubled assets from the two funds, package them as Everquest, and then try to foist investment in those shaky assets onto the public in an IPO. As a result of the defendants’ actions, the Enhanced Fund still owned shares in Everquest into July 2007 and Barclays has been harmed by the faulty underlying Everquest investments. The Everquest shares were not a permitted investment under the investment restrictions negotiated with Barclays, and ownership of Everquest shares was never disclosed as such on BSAM’s reports to Barclays of the Enhanced Fund’s portfolio.

16. Because the BSAM Defendants have withheld information to which Barclays is entitled, and Barclays does not have full and accurate information about the current assets and NAV of the Enhanced Fund, Barclays cannot determine its precise damages from defendants’ misconduct. Those losses, however, are clearly in excess of the jurisdictional threshold of this Court. Indeed, on July 31, 2007, the Enhanced Fund started a liquidation proceeding and filed a petition in bankruptcy court. The liquidators report that the Enhanced Fund is likely insolvent. If that is correct, and Barclays recovers nothing from the liquidation process, it will have lost all of its leverage provided to and fees owed from the BSAM transaction.

17. The chief executive of The Bear Stearns Companies Inc. (“Bear Stearns Companies”) (the parent of BSAM and Bear Stearns), James Cayne, has admitted that Bear Stearns Companies’ carefully-honed reputation for sound risk management and prudent investing has

suffered a “body blow of massive proportion.” According to *The New York Times*, others within Bear Stearns Companies have described the failed funds situation as “a fiasco” that is “without parallel in its 84-year history.”

18. As a direct result of the collapse of the funds, leaders of Bear Stearns Companies at the end of June 2007 ousted the chairman and chief executive of BSAM, Richard Marin, and brought in a replacement from Lehman Brothers. Defendant Cioffi was removed from the helm of the Enhanced Fund in June. The Bear Stearns Companies’ management led the response to the crisis in the two fund structures. The parent company also took on even more direct supervision of BSAM’s risk management activities, with BSAM risk-management personnel coming under the day-to-day supervision of Michael Alix, the parent company’s chief risk officer.

19. In a further bid to salvage BSAM’s and the broader company’s reputations, Bear Stearns Companies also jumped in with an infusion of approximately \$1.6 billion in financing for the High-Grade Fund. It is now known that as of June 2007 the High-Grade Fund was performing better and had higher quality assets under management than the Enhanced Fund, which was contrary to BSAM’s commitments to Barclays.

20. No Bear Stearns Companies’ financial support was offered to rescue the Enhanced Fund, in which Barclays owns the sole direct economic stake. Bear Stearns Companies’ then co-President, Warren Spector, made clear during the June 2007 crisis that the parent company and BSAM would attempt to “save the less leveraged fund that had better quality assets and let the other fund collapse,” as reported by *The Wall Street Journal*.

21. This decision to sacrifice the Enhanced Fund led to further asset destruction in the Enhanced Fund, through even more urgent counterparty deals and fire-sales of the underlying

portfolio assets, as described below. Bear Stearns Companies, Bear Stearns, and BSAM tried to salvage their tattered reputations while letting Barclays' losses continue to mount. The defendants instead could have avoided such fire-sales and kept their commitments to Barclays.

22. By the beginning of August 2007, Spector was forced to resign as Bear Stearns Companies' co-President because of his fault in the unraveling of the Enhanced Fund and in Bear Stearns Companies' escalating crisis. *The New York Times* explained that Spector's position became "untenable" – during the critical time period, "[n]ot only did [BSAM's] asset management business report to him but he also had direct responsibility over the risk controls that were in place there." Those controls had proven wholly insufficient, and then further actions by Bear Stearns Companies in June 2007 exacerbated the damage to the Enhanced Fund structure.

23. As a result of the wrongdoing pled in this Complaint, Barclays sues BSAM and Tannin for fraud and misrepresentation; Cioffi for conspiring with those defendants to commit fraud; BSAM, Cioffi and Tannin for breach of their fiduciary duties and duties of care owed specifically to Barclays in their management of the Enhanced Fund and operation of the structure; BSAM for promissory estoppel; Bear Stearns for its conspirator role along with the BSAM Defendants in misusing the Enhanced Fund to serve interests other than Barclays'; and Bear Stearns Companies for its actions in conspiring with and aiding BSAM's breach of its duties to Barclays, especially during the June 2007 crisis, and its role in helping the Enhanced Fund fail in a manner that caused further losses uniquely to Barclays.



PARTIES

24. Plaintiff, Barclays Bank PLC, is a public limited company validly existing under the laws of England and Wales. Its principal place of business is 1 Churchill Place, London E14 5HP, England.

25. Defendant Bear Stearns Asset Management Inc. is a corporation organized under the laws of the State of New York. Its principal place of business is 383 Madison Avenue, New York, New York 10179.

26. Defendant Ralph Cioffi was, at times relevant to this action, a Senior Managing Director at Bear Stearns Asset Management Inc., a member of BSAM's Board of Directors, the Senior Portfolio Manager for the funds at issue in this case, and was until sometime in June 2007 responsible for, inter alia, the composition of and risk management in those funds. Cioffi is a resident of the State of New Jersey.

27. Defendant Matthew Tannin is a Senior Managing Director of Bear Stearns Asset Management Inc. At least until mid-June 2007, Tannin was the Chief Operating Officer of the Enhanced Fund and the other BSAM-managed funds relevant to this action. Tannin is a resident of the State of New York.

28. Defendant Bear, Stearns & Co. Inc. is a corporation organized under the laws of the State of Delaware. It is an investment banking, securities trading, and brokerage firm. Its principal place of business is 383 Madison Avenue, New York, New York 10179.

29. Defendant The Bear Stearns Companies Inc. is a corporation organized under the laws of the State of Delaware, and is the parent of wholly-owned subsidiaries BSAM and Bear, Stearns & Co. Inc. Its principal place of business is at 383 Madison Avenue, New York, New York 10179.

JURISDICTION AND VENUE

30. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332. This action is between a citizen of the United Kingdom, as Plaintiff, and citizens of New York, Delaware and New Jersey, as Defendants, and the amount in controversy exceeds \$75,000.

31. Venue is proper in the Southern District of New York because a substantial part of the events or omissions giving rise to the claims occurred in this district.

BEAR STEARNS' AND BSAM'S EXPERIENCE IN

THE STRUCTURED CREDIT MARKETS

32. The Bear Stearns Companies together constitute a global investment bank, securities trading and financial services firm. Its subsidiaries have focused particularly on bond trading, with significant market share in the securitization of mortgage loans and in the trading of the resulting securities.

33. BSAM is the asset management arm of Bear Stearns Companies and is an SEC-registered investment advisor. Until the events detailed in this Complaint, BSAM purported to be a market leader in the area of structured credit services and an expert in managing structured credit assets.

34. A key feature of BSAM's strategy has been its claimed leadership in risk management – which BSAM has described as the “cornerstone” of its business practice – namely, careful portfolio construction, ongoing surveillance and valuing of portfolio assets, and conservative hedging strategies to manage the credit risk in those assets. In the past, BSAM had a widespread reputation for this purported risk management expertise and for its (again, purported) uniquely-effective proprietary methods of portfolio management.

35. Defendant Cioffi, in particular, was by 2006 deemed an expert with a “stellar reputation” in structuring and managing structured finance products, particularly collateralized debt obligations (CDOs) and other types of asset-backed securities.

36. In March 2003, BSAM and Cioffi formed the High-Grade Fund as an investment fund that could be “compared to a specialty finance company” because it would bring together a very large number of structured credit assets and produce returns for investors based on the payments the fund received from those assets.

37. The risks associated with structured credit assets vary according to asset class, credit rating, and other factors. As explained to Barclays, the High-Grade Fund’s strategy – and a core feature of BSAM’s overall structured credit business model – was to select and monitor its portfolio assets in a highly informed and careful way that would manage and hedge against any significant risks associated with fluctuations in particular segments of the credit market, including in asset-backed securities based on sub-prime mortgages.

38. By August 2006, the High-Grade Fund had reportedly enjoyed a return in excess of 36%. As of January 2007, it reportedly had experienced no decline in 40 months and earned a cumulative return of 50%. Barclays has recently learned that, despite its positive public reports, the High-Grade Fund was experiencing serious liquidity problems by at least September 2006 (and possibly earlier), and BSAM, Cioffi and Tannin concealed those troubles, as will be described below.

39. In 2006, BSAM, Cioffi and Tannin decided to form a second, spin-off master-feeder fund structure, and did so by capitalizing on the High-Grade Fund’s reported track record and success in attracting investors. This fund structure, according to the BSAM Defendants’ statements to Barclays discussed in more detail below, would employ the same purported BSAM expertise and

proprietary analytics, and be managed in a similar fashion to the High-Grade Fund, but would utilize greater leverage.

BARCLAYS' LEVERAGE INSTRUMENT AND HEDGE TRANSACTION

40. Thus, in 2006 BSAM created the Enhanced Fund. Bear Stearns' or BSAM's clients seeking exposure to that master fund portfolio's investments were able to purchase interests in two new BSAM "feeder funds," the Bear Stearns High-Grade Structured Credit Strategies Enhanced Leverage Fund, L.P. and the Bear Stearns High-Grade Structured Credit Strategies Enhanced Leverage (Overseas) Ltd. (collectively, the "Feeder Funds").

41. The "enhanced leverage" for investors in the Feeder Funds came in significant part from a "total return swap" for which Barclays served as the counterparty. The negotiations and representations between BSAM and Barclays that led Barclays, at BSAM's request, to provide the leverage for the Feeder Funds and simultaneously to hedge its risks by owning shares in the Enhanced Fund are described in more detail in the next section of the Complaint.

42. Barclays was positioned between the Feeder Funds and the master fund in the "enhanced leverage" structure. A structural diagram is attached to and incorporated in this Complaint as Exhibit A.

43. The overall transaction is a financing transaction that resembles a loan from Barclays to the structure, with the Enhanced Fund portfolio providing security for the leverage.

44. Barclays entered into a total return swap with each Feeder Fund, memorialized in Confirmation Nos. BL15089 and BL15090. The swaps were constructed so that Barclays would return to each Feeder Fund the total net asset value (plus any cash) achieved by a reference portfolio based on the Enhanced Fund *as if* both the Feeder Fund's investor assets and the notional (*i.e.*, committed) dollar amount from Barclays had been invested in the Enhanced Fund,

minus (a) the notional amount and (b) accreted interest and spread (Barclays' fee for the leverage) that would be retained by Barclays as a payment from each Feeder Fund. On the closing and effective date of the transaction, August 1, 2006, the notional or leverage amount for the two Feeder Funds from Barclays was \$50,000,000.

45. For Feeder Fund investors, the anticipated benefit of the total return swap was that if the Enhanced Fund assets increased in value, the Feeder Fund investors would receive back from their counterparty Barclays at the end of the transaction their initial investment *plus* the total return on the Enhanced Fund assets as augmented by Barclays' leverage amount (and minus their fee to Barclays).

46. The Confirmations provide that when the swaps and hedge are in place, the notional amount is treated for U.S. federal income tax purposes as "a loan from Party A [Barclays] to Party B [each Feeder Fund]." This status of the whole transaction as a loan for U.S. tax purposes was particularly important to BSAM.

47. The swaps were for a three-year period, but could be terminated by Barclays early based on various termination events in the confirmation agreements and in an annexed and incorporated list of Additional Termination Events.

48. Each swap Confirmation further provided that on its initial effective date Barclays must own shares in the Enhanced Fund equal, in their aggregate value, to the Initial Reference Portfolio Value. The Initial Reference Portfolio Value consisted of (i) the initial aggregate investment in the swap from the Feeder Fund plus (ii) the initial notional amount committed by Barclays.

49. To establish the new "enhanced leverage" fund structure, BSAM offered its investors in the High-Grade Fund's feeder funds the option of moving to the Enhanced Fund structure.

Assets were transferred from the High-Grade Fund to the Enhanced Fund in proportion to the indirect interest therein of the investors who decided to move to the Enhanced Fund structure.

50. Barclays acquired its initial shares in the Enhanced Fund because the Feeder Funds were deemed to have contributed the initial portfolio to the Enhanced Fund on Barclays' behalf through the above process. Barclays also acquired shares through its own subscription, equal to its notional amount.

51. By owning shares in the Enhanced Fund (the reference fund under the swaps), Barclays hedged its obligations to the Feeder Funds under the total return swaps. This hedge was a critical feature of the overall transaction for Barclays because it permitted Barclays to obtain the same rate of return that it would owe Feeder Fund investors if the Enhanced Fund increased in value.

52. The Confirmations provided that after the initial effective date, Barclays was not required to maintain any hedge through shares in the Enhanced Fund. However, Barclays negotiated the whole transaction with BSAM – and in particular, negotiated the Investment Guidelines and the Reporting Requirements – with the obvious and stated intention, acknowledged by BSAM, that Barclays would continue to hedge its swap obligations with ownership of shares in the Enhanced Fund throughout the life of the transaction. This continuing hedge was also important to BSAM, so that the entire transaction could be viewed as a loan.

53. After closing the transaction and establishing the structure, BSAM served as investment manager for the Enhanced Fund, investment manager for the overseas Feeder Fund, and general partner for the U.S. Feeder Fund. BSAM's compensation for all of these investment management roles came through advisory fees and incentive or profit-sharing payments from the Feeder Funds and their investors (and not from Barclays). BSAM's compensation turned on

various formulas related to the NAVs of the Feeder Funds, and thus, in turn, the NAV of the Enhanced Fund. A growing NAV in the Enhanced Fund would lead to greater compensation.

54. The Enhanced Fund is a Cayman Islands entity. Barclays subscribed to shares from that Cayman Islands entity through a process that was devised solely for Barclays and that relied upon the fact that Barclays, as subscriber, was a non-United States entity. Moreover, the Enhanced Fund, in the context of the subscription, specifically acknowledged that Barclays was subscribing to shares to the extent necessary to hedge and for the purpose of hedging the total return swaps.

55. Barclays could not profit from an increase in the value of the Enhanced Fund. Any increase in the Enhanced Fund (also the swap reference fund) would be correspondingly owed to the Feeder Fund investors. Barclays' fee for the entire transaction came from the floating interest rate option (USD-LIBOR-LIBO) plus a spread specified in the Confirmations. Thus, for Barclays, the transaction was the functional equivalent of a loan.

56. As will become clear below, Barclays' hedge through ownership of shares (contemplated by both Barclays and BSAM to exist throughout the transaction) is distinguished from the also-critical hedging activities by BSAM, Cioffi and Tannin, as investment managers, within the Enhanced Fund portfolio itself.

#### BSAM'S INITIAL REPRESENTATIONS AND COMMITMENTS TO BARCLAYS

57. Barclays' participation in the two Feeder Fund swaps and the corresponding hedge came about after months of negotiations with BSAM. Those negotiations began when, in or about early March 2006, BSAM proposed to Barclays that Barclays provide the leverage instruments for the planned new "enhanced leverage" Feeder Funds.

58. Defendant Tannin of BSAM invited Ram Rao and Edward Ware of Barclays to visit with him at BSAM's offices in the Bear Stearns Companies' building and have lunch.

59. At that lunch meeting on or about March 6, 2006, Tannin described the planned new fund and the need for a leverage counterparty.

60. Tannin emphasized to Rao and Ware that BSAM's specialties were risk management for this kind of structured credit investment fund and the assessment of the value in particular structured credit assets. Tannin gave Rao and Ware information about the High-Grade Fund and about BSAM's overall approach to structured credit investment, and later forwarded to them detailed written reports and spreadsheets on the High-Grade Fund. Tannin claimed that BSAM and "Bear Stearns" generally were the best in the field.

61. Tannin told Rao and Ware at the initial meeting – and throughout the negotiation of the transaction – that BSAM wanted Barclays to have comfort in entering into a leverage counterparty role, and stressed that what was to become the Enhanced Fund would be constructed and operated with full transparency to Barclays. According to Tannin, BSAM would provide Barclays with ongoing access to all of BSAM's portfolio content and pricing information.

62. On or about March 22, 2006, Rao, Ware, Richard Ho, Carlo Panzeri, and Frank Gerhard from Barclays met with Tannin and other members of BSAM's risk management and operations staff for a due diligence meeting at BSAM. Ho, Panzeri and Gerhard came from London, where they are based, to New York for this meeting. The Barclays employees also spoke with Cioffi at the meeting. Other due diligence calls with BSAM, from its New York City offices, and further exchange of information from BSAM to Barclays occurred in the months after this meeting.

63. During Barclays' initial investigation of the proposed structure, BSAM gave Barclays a PowerPoint presentation on "Bear Stearns High-Grade Structured Credit Strategies" and on



BSAM's claimed capabilities in managing structured credit funds. Tannin and BSAM explained that the Enhanced Fund would be managed with the same team and the same, then-existing methods of "investment process" discussed in the PowerPoint slides – including the same proprietary analytics and portfolio system.

64. In the PowerPoint presentation, and in statements made to Barclays at the March 22 due diligence meeting, and in other conversations before Barclays entered into the total return swaps and related hedge, BSAM emphasized its proprietary "Surveillance, Portfolio Evaluation, Analysis and Risk System" for structured credits and their underlying portfolios.

65. According to BSAM, that system aggregated information from multiple vendors and applied analytics, including Bear Stearns BondStudio and proprietary models, to keep BSAM informed about each asset's performance and stability. In BSAM's system, BSAM told Barclays in the PowerPoint and in other communications, "Alerts and Collateral Management reports are generated every day based upon updated data from the data providers." BSAM further stated to Barclays that this proprietary system allowed its credit portfolio managers "to quickly identify and sell any suspect assets before credit deterioration begins or ratings downgrades occur."

66. In addition, BSAM represented in the PowerPoint and in other statements to Barclays that its investment process "prioritize[d] clean, new issue quality assets" and "filter[ed] out assets based upon collateral quality test performance, concentration limitations, payment frequency, maturity as well as weighted average life, and ratings."

67. Tannin told Ware and others from Barclays in the 2006 negotiations that the Enhanced Leverage fund planned to apply Barclays' additional leverage to even higher quality assets, by increasing the proportion of the highest rated assets in the Enhanced Fund's portfolio, than were held by the High-Grade Fund.

68. Tannin told Ware early on in the negotiations, and on several occasions before Barclays entered into the transaction, that BSAM's then-existing investment system allowed it, in Tannin's words, to avoid "freaked-out repo counterparty risk." (In general, a repurchase or "repo" agreement is the sale of securities coupled with an agreement by the initial holder to repurchase them at a later date. It is in many ways similar to a secured loan with the securities as collateral to protect against default, except that in a repo arrangement legal title to the securities actually passes to the lender. Thus, under certain margin call or default circumstances, the lender can liquidate the assets. Repo agreements with Barclays and other banks were used by BSAM as an additional source of leverage within its structured credit portfolios.)

69. BSAM's presentation to Barclays also emphasized that BSAM used credit derivatives and "long protection" positions to hedge the underlying portfolio. BSAM represented to Barclays during the initial negotiations that its vast access to information and analytics allowed it to be particularly adept at hedging. BSAM further represented that its portfolio in the Enhanced Fund, like its existing High-Grade Fund, would not be subject to the risk of uni-directional bets that might cause sudden large movements in the value of the portfolio.

70. In a March 28, 2006, e-mail to Rao and Ware, Tannin further explained BSAM's portfolio approach and the protections it specifically would provide Barclays in the Enhanced Fund. He explained that the BSAM team uses two forms of leverage:

We have "internal" leverage assets and "external" leverage assets. Internal leverage assets are structurings or repackagings that we do where we take the high quality assets and fund them from within a structure. This gives us pure cash flow leverage which does not have first order mark-to-market volatility. We also use more traditional repo and TRS [total-return-swap] leverage.

. . . We plan to use the leverage provided by you guys to increase the proportion of EXTERNAL leverage assets. We plan to do this because this will give you guys the comfort that you need that **we will always be able to maintain a level of**

**liquidity that will allow us to “dial” up and down the leverage based upon market price volatility when necessary.**

(Emphasis added.)

71. The “increase[d] proportion” of externally leveraged assets would, according to Tannin and BSAM, be the highest quality assets.

72. Again on April 6, 2006, Tannin emphasized BSAM’s transparent information flows and its ability to manage risk in the Enhanced Fund in an e-mail to Rao and Ware at Barclays:

We are more than happy to discuss with you credit and portfolio limits for the underlying portfolios as well. This way if there is measurable CREDIT deterioration we can factor this in and reduce the leverage.

**I don’t want to sound like a broken record but the value of this transaction lies in the transparency of credit information on high underlying credit quality assets. We have a lot of it and you can have it as often as you want. We’ll even chew it up for you and give you customized reports. Look at the stability of the ratings in these portfolios[.]**

(Emphasis added.)

73. Based on BSAM’s stated extant expertise, capabilities, and practices, Barclays decided to proceed toward becoming the leverage counterparty and to negotiate further details of the planned transaction.

74. Barclays also continued to rely on the above representations and commitments from BSAM and Tannin in later closing the deal, in increasing Barclays’ contribution to the structure in March 2007, and in participating in the structure into July 2007.

75. Before entering into the transaction, Barclays not only questioned BSAM and engaged in due diligence, but also investigated BSAM and its stated capabilities through third party inquiries and sources.

76. In addition, Barclays’ ultimate participation in the deal was contingent (among other things) upon its obtaining commitments from BSAM about its operation of the Enhanced Fund

as investment manager that were customized to Barclays. These commitments by BSAM to Barclays were explicitly agreed to be greater than BSAM's commitments to the Feeder Funds' investors, and greater than BSAM's general obligations to the Enhanced Fund itself. Thus, BSAM and Barclays continued their one-on-one discussions and negotiations also to develop these additional commitments to Barclays, as the sole participating shareholder in the Enhanced Fund and swap counterparty.

77. As a result, during the months between March and August 1, 2006, Barclays and BSAM negotiated specific investment limitations ("Investment Guidelines") and reporting commitments ("Reporting Requirements"), to which BSAM agreed for Barclays' benefit. BSAM did this to induce Barclays to enter into the swaps and their corresponding hedge and specifically to protect Barclays with regard to BSAM's activities as investment manager of the Enhanced Fund.

78. Tannin was Barclays' primary contact at BSAM. He consulted with Cioffi and Raymond McGarrigal, another Senior Managing Director, during the negotiations. Cioffi himself, however, negotiated the leverage transaction's pricing with Barclays.

79. Cioffi was Tannin's supervisor, and was aware of Tannin's actions, and oversaw Tannin's activities that are alleged in this Complaint.

80. Richard Ho in London had primary responsibility for the transaction at Barclays; and which became part of Barclays' London business. Barclays' Rao and Ware, in New York, were at times the immediate points of contact with Tannin and BSAM. Carlo Panzeri, in London, reviewed and assisted in the negotiation of the investment limitations and reporting commitments for Barclays.

81. Tannin, on behalf of BSAM, agreed to the final version of the Investment Guidelines on or about July 31, 2006, the day before the closing of the deal.

82. Each specification in the five-page Investment Guidelines, which were annexed to the Confirmations and are attached hereto as Exhibit B, was a representation, commitment, and agreement by BSAM, as investment manager, that it “will operate the [Enhanced] Fund in accordance with” that specification.

83. These specially-negotiated terms of the Investment Guidelines were representations, commitments and agreements regarding non-discretionary requirements that BSAM made specifically to Barclays. These specifically-negotiated terms were in addition to and separate from any representations made to the Feeder Fund investors or any representations made to the Enhanced Fund itself. They specifically pertained to BSAM’s role in managing and operating the Enhanced Fund while Barclays served as the leverage counterparty and hedged its risk through shares in that fund.

84. Barclays relied on all of the representations, commitments and agreements by BSAM in Exhibit B in deciding to undertake the swaps and their hedge, in committing additional funds after the initial closing, and in continuing to participate in the transaction into July 2007. BSAM and Tannin knew that Barclays was relying on those representations, agreements and commitments, and intended that Barclays do so.

85. In addition, each specification of the Reporting Requirements, which were annexed to the Confirmations and are attached hereto as Exhibit C, was a representation, commitment, and agreement by BSAM, as investment manager, that it “will provide Barclays” with (or will cause the Enhanced Fund’s administrator to provide Barclays with) the listed reports and notices.

86. The specially-negotiated terms of the Reporting Requirements were representations, commitments and agreements regarding non-discretionary requirements that BSAM made specifically to Barclays. These specifically-negotiated terms were in addition to and separate

from any representations made to the Feeder Fund investors or any representations made to the Enhanced Fund itself. They specifically pertained to BSAM's role in managing and operating the Enhanced Fund while Barclays served as the leverage counterparty and hedged its risk through shares in that fund.

87. Tannin and BSAM also confirmed BSAM's agreement to the Reporting Requirements to Ware and others at Barclays shortly before the deal closed on August 1, 2006. Indeed, Tannin represented to Panzeri and others during conversations in mid-2006 that the Reporting Requirements for the Enhanced Fund closely reflected BSAM's then-existing, internal reporting with respect to its original High-Grade Fund and thus would simply continue BSAM's current practices. Again, BSAM agreed to these reporting requirements to provide Barclays with personal protections greater than it provided to others.

88. Barclays relied on all of the representations, commitments and agreements by BSAM in Exhibit C in deciding to undertake the swaps and their hedge, in contributing additional funds after the initial closing, and in continuing to participate in the transaction into July 2007. BSAM and Tannin knew that Barclays was relying on those representations, commitments and agreements, and intended that Barclays do so.

89. High quality assets, limitations on permitted investments, and adherence to portfolio diversification requirements for the Enhanced Fund were critical to Barclays in establishing the basis for its participation in the transaction. The permitted investments and their concentration limitations were specifically defined in the Investment Guidelines. In addition, Barclays' negotiations focused on ensuring that especially hard-to-price assets would be excluded from the portfolio.

90. For example, under the Barclays-specific Investment Guidelines that BSAM represented and agreed it would follow, “Instruments where there is no official public price available are only eligible if the Reference Fund Administrator is able to obtain independent pricings of the instrument on a regular basis from financial counterparties.”

91. Based on BSAM’s stated expertise and then-existing access to effective proprietary analysis, Barclays was relying on BSAM continuously to “mark” the portfolio assets appropriately and accurately, and to do so with transparency to Barclays. (Under the Reporting Requirements, Barclays was entitled to “[w]eekly pricing sheets detailing the sources of the marks of the various underlying products.”) The required ability of the Reference Fund Administrator, a third-party institution, under the Investment Guidelines to price assets independently on a daily or at least regular basis was negotiated to provide additional assurance that on assets in the portfolio were not being over-valued.

92. CDOs are issued by special purpose entities organized to buy debt collateral. The special purpose entities bundle together and structure a portfolio of collateral – various debt assets – and then issue tranches (or groups of securities organized by class) of “CDOs” that in the higher tranches are rated by the major credit rating agencies but in the junior tranches are unrated “equity.” CDOs often include mortgage assets in their collateral.

93. Under the Barclays-specific Investment Guidelines, CDOs were a permitted investment, defined to include not only plain CDOs, but also Synthetic CDOs, High Grade and High Yield CDOs. But CDOs were not defined to include CDO-squared investments, which are CDOs in which the underlying instruments are in turn other CDOs. CDOs, as described and limited in the Investment Guidelines, were restricted to an upper limit of 60% of the portfolio assets.

94. The Investment Guidelines required that from 75% to 100% of the total portfolio assets had to carry a AAA to AA- rating. Below BBB- or not-rated assets could comprise at most 3.5% of the total assets. A single issue rated below A- or unrated could not amount to more than 0.1% of total assets or more than 2% of NAV.

95. Tannin described these “AA/AAA assets” as having “very very low volatility” in a May 1, 2006, e-mail to Ware, Rao, and Panzeri at Barclays.

96. In that same e-mail, Tannin described to Barclays that the new “enhanced” structure would “continue to operate [as did the High-Grade Fund] in the best parts of the capital structure”; “concentrate the ultimate exposure in the highest rated floating rate kinds of assets” and “[g]enerate a prudent return for our investors which allows our portfolio managers and structuring team to concentrate on the areas in the market where there is the greatest liquidity and greatest value.”

97. As above, Barclays relied on each of the representations, commitments and agreements described in paragraphs 89-96 in deciding to proceed initially and in continuing to participate in the transaction, without terminating, into July 2007. BSAM and Tannin knew that Barclays was relying on those representations, commitments and agreements, and intended that Barclays do so.

98. Transparency in the portfolio’s operations and in the pricing of its assets also was critical to Barclays. The Reporting Requirements specified timely, detailed reporting of various types to Barclays on a daily, weekly, and monthly basis.

99. BSAM agreed in the Reporting Requirements, for example, to provide to Barclays “[r]eports comparing the Reference Fund portfolio with the Investment Guidelines on a weekly basis”; “[f]ull investment positions reports on a weekly basis” and “[n]otice as soon as



reasonably possible of any change in circumstances, which might cause the final monthly NAV of the [Enhanced Fund] to show a loss in value equal to or more than 10%[.]”

100. BSAM further agreed that the Enhanced Fund’s administrator would provide Barclays with estimated monthly NAV values “no later than twelve Business Days following the end of each calendar month.”

101. The Confirmations provided that the fund administrator was obligated to report final NAVs to Barclays on the fifteenth day following a relevant “dealing date.” This dealing date under the initial Confirmations was the first day of each month; by the end of March, 2007, the dealing dates had been amended to be the third and fifteenth days of each month, with the final NAV expected on the fifteenth day following the first dealing date (*i.e.*, the third day) of the month.

102. Again, Barclays relied on each of these representations, agreements and commitments in deciding to proceed initially and in continuing to participate in the transaction. BSAM and Tannin knew and intended that Barclays would do so.

103. Barclays’ information at closing supported BSAM’s portrayal of itself as extremely proficient and data-rich in structured credit markets; as having proprietary models and systems that did and would continue to assess accurately portfolio value, and thus protect Barclays’ financial exposure; as committed to transparency in pricing and about its operations; and as being able – indeed, obliged – to warn Barclays should any significant increased risk arise, with time for corrective action.

**INITIAL REPRESENTATIONS AND PROMISES TO BARCLAYS PROVED UNTRUE**

104. In fact, Tannin and BSAM falsely represented to Barclays that BSAM would adhere to the Investment Guidelines and Reporting Requirements, and falsely represented BSAM’s risk

management practices and ability to avoid harm from deterioration in the value of the portfolio assets. The falsity of the representations about – and BSAM’s failure to meet its commitments regarding – timely and accurate pricing and reporting, effective hedging strategies, control over risk, portfolio limits, and other central aspects of BSAM’s initial portrait of the Enhanced Fund for Barclays were revealed only in June 2007. Those misrepresentations caused losses to Barclays.

105. In its operation of the structure and management of the Enhanced Fund, BSAM – as its many explicit commitments to Barclays’ interests and requirements made clear – stood in a special fiduciary relationship to Barclays. Yet, after the transaction closed, BSAM, Cioffi and Tannin did not make good on the commitments, agreements, and duties they had undertaken for the benefit of Barclays. Instead, BSAM and its individual managers operated the fund deceptively, for their own or their conspirators’ gain, in bad faith, and in a grossly negligent manner, contrary to the duties that they owed Barclays. Those actions caused losses to Barclays.

106. BSAM’s and Tannin’s pre-closing misrepresentations were made, in part, because by June 2006, BSAM had already started soliciting investors for the new Feeder Funds, including with the representation that Barclays would serve as the leverage instrument counterparty. As the summer of 2006 progressed, BSAM became very highly motivated to get its “enhanced” structure underway after months of negotiations. BSAM and its managers stood to gain in their compensation and prestige from this expansion of BSAM’s “marquee” structured credit strategies practice. Indeed, as described below, BSAM, Cioffi and Tannin decided that they would use the Enhanced Fund to conceal from investors worsening liquidity problems within the High-Grade Fund. They also did not want to be proven wrong in their already-disseminated statement to prospective investors that Barclays would serve as the leverage counterparty.

107. Against this backdrop, Tannin and BSAM misled Barclays and made commitments that BSAM would not honor. Tannin and BSAM intentionally deceived Barclays, or at a minimum made factual representations with recklessness, in order to bring their planned “enhanced” fund to fruition.

108. As time went on, Tannin and BSAM intentionally, or at a minimum recklessly, deceived Barclays in an ever-expanding way in order to obtain a further infusion of Barclays’ financial support for the structure, hide self-dealing, conceal performance problems, and keep Barclays in the structure. Moreover, BSAM likewise failed in its fiduciary duties to Barclays and acted contrary to its detailed commitments to Barclays in the operation and management of the Enhanced Fund.

109. The BSAM Defendants managed the Enhanced Fund and breached their fiduciary duties specific to Barclays from their offices in New York City.

110. Barclays has suffered losses as a result of its reasonable reliance on BSAM’s and Tannin’s representations, and on Barclays’ expectation that BSAM would fulfill BSAM’s fiduciary duties and its other duties of care specific to Barclays. BSAM’s numerous misrepresentations and breaches, and BSAM and Bear Stearns’ self-interested use of the Enhanced Fund, further described below, eventually led to very large and swift uncontrolled losses in the Enhanced Fund, without BSAM providing the required warnings to Barclays that BSAM had committed to provide. Barclays now knows that, contrary to BSAM’s representations to Barclays about their effective, risk-controlling practices, BSAM’s proprietary systems and portfolio management were grossly ineffective.

111. The initial misrepresentations to Barclays first were followed by reporting failures. After the total return swaps closed on August 1, 2006, and Barclays simultaneously subscribed to

shares, BSAM did not immediately institute reporting that complied with its agreement and representations, commitments and agreements. Barclays repeatedly pushed BSAM to do so. BSAM, Tannin and Robert Ervin, another BSAM employee, continually affirmed to Barclays during the next months that BSAM remained committed to meeting all the Reporting Requirements and to providing “whatever,” in the words of Tannin to Ware and others, Barclays needed with regard to portfolio information.

112. Carlo Panzeri and Angus McIsaac of Barclays’ risk-management department in London began a long process of attempting to get adequate reports, repeatedly following up with BSAM to work toward the proper reporting and to obtain what Barclays had been promised from BSAM.

113. Panzeri and McIsaac gradually extracted more reporting from BSAM, after an initial “ramping up” period, but continued to push for more adequate compliance with the Reporting Requirements as 2007 began.

A “LIQUIDITY SOURCE” TO CONCEAL THE HIGH-GRADE FUND’S TROUBLES

114. As discussed above, to secure Barclays’ initial investment and later participation in the Enhanced Fund structure, the BSAM Defendants touted their supposedly unique and successful portfolio risk management capabilities, in particular with the High-Grade Fund. Despite the positive reports BSAM gave to Barclays regarding the High-Grade Fund, Barclays recently has learned that the High-Grade Fund was experiencing serious liquidity problems in at least September 2006, and possibly earlier.

115. In fact, the High-Grade Fund’s liquidity problems motivated the BSAM Defendants to deceive Barclays into investing and continuing to participate in the Enhanced Fund structure.

116. For example, on September 17, 2006, Tannin apparently sent Cioffi an e-mail regarding a potential “liquidity game plan” for the High-Grade Fund, stating “I think we need to have a very specific idea of how we would raise 100mm in liquidity over a sixty day period. . . .”

117. In response to Tannin’s e-mail, Cioffi sent an e-mail to Tannin on the same day, stating that “What we need to figure out is how to get the majority of our [limited partners] into the enhanced fund. That will take some time but once we do that **we have an easy liquidity source and that’s Barclays.**” (Emphasis added.)

118. The High-Grade Fund’s liquidity problems were apparently so severe by September 2006 that Cioffi had considered closing the High-Grade Fund altogether and moving all of the High-Grade Fund investors into the Enhanced Fund structure. Again on September 17, 2006, Cioffi wrote a further “liquidity game plan” e-mail to Tannin:

What I was thinking was to build up 6 [months] of returns then send a letter to all the remaining investors and tell them we are closing the [High-Grade Fund] and ask everyone to convert to [the Enhanced Fund]. We’d have to handle it like we did thru an exchange of assets[.] I would not want to have to sell everything. This is the riskiest way to go because you know some [limited partners] will not convert but I feel comfortable that we can get almost all of them to.

119. Apparently because BSAM, Tannin and Cioffi viewed Barclays as an “easy liquidity source,” it was important for these defendants to deceive Barclays to commit initially and remain invested in the Enhanced Fund structure so that they would have a way of concealing the High-Grade Fund’s troubles from its own investors (*i.e.*, by “getting” those investors to convert to investments in the Enhanced Fund Structure), thereby preserving the defendants’ own reputations in the process. Barclays was never told of that strategy before making its initial and later commitments to the Enhanced Fund structure. In fact, Barclays did not learn of it until well after both funds collapsed. Instead, Barclays invested and continued to participate in the

structure based on BSAM's and Tannin's multiple representations, including those about the High-Grade Fund's strong financial position.

"OUR HEDGES ARE WORKING BEAUTIFULLY"

120. BSAM's and Tannin's deception expanded further in February and March 2007, when Tannin (and BSAM) attempted to convince Barclays to increase its financial commitment to the structure. As explained below, the initial deceptions and these early 2007 deceptions were followed by more deceptions of Barclays, all of which were exposed only with the revelations in mid-June and later.

121. From in or about January 2007 until early June 2007, Tannin and others at BSAM offered – usually unsolicited – statements to Barclays about the Enhanced Fund's performance that repeatedly represented to Barclays that the Enhanced Fund, and in particular its portfolio hedging strategies, were performing well. Tannin and BSAM never described any reason for concern during this period. Instead, they continually represented that the fund was doing "great." They represented that BSAM's methods were successfully capitalizing on, and not falling prey to, the volatility in the sub-prime mortgage market.

122. On or about January 22, 2007, Tannin met Ram Rao and Edward Ware of Barclays for a long-delayed closing dinner in New York. Tannin told Rao and Ware that the new Enhanced Fund was performing well. He used the word "great" and offered no caveats. Tannin also raised the possibility of exploring additional business opportunities with Barclays.

123. Ware talked by phone with Tannin on many occasions and "great" was consistently the synopsis of the Enhanced Fund's performance, in each conversation from the date of execution through the spring of 2007.

124. On or about February 19, 2007, McIsaac in London requested that Tannin send Barclays the latest Excel spreadsheet and “factsheet” for the Enhanced Fund. Neither McIsaac nor anyone else at Barclays received the requested information.

125. Instead, Tannin responded by e-mail to McIsaac on the same date with this representation about the Enhanced Fund’s performance: **“You will be happy to know that we are having our best month ever this February. Our hedges are working beautifully. We were up 1.6% in January and are up 2% so far in February.”** (Emphasis added.)

126. On or about February 27, 2007, McIsaac again asked Tannin for reports on the Enhanced Fund portfolio. Tannin, in an email response that same day to McIsaac and Ware, provided a position report, a portfolio list, and this summary of the fund’s most recent performance:

Here is the relevant information for Enhanced Leverage.

**As you can see, despite the sell off in the sub-prime mortgage market -- our fund continues to do well, quite well, in fact.**

Here are a few points I think you should be aware of:

1. Our hedges are working just as we discussed. Our hedges are lower quality than our assets - so in this market **we’ve experienced a significant mark to market gain so far this month.**
2. Our term financed positions are not as sensitive to this market volatility - just as we’ve discussed
3. We have been in touch with all of our repo counterparties - and they are uniformly very happy with all of our positions.

In short, we are very pleased with our performance - but even more important than that we are pleased that our ideas about how to structure our risk and limit our volatility are once again proving to have been prudent.

(Emphasis added.)

127. The first page of the attached portfolio report that Tannin sent to Barclays on February 27 to provide Barclays with “information for the Enhanced Fund” showed BSAM’s calculation of a 5.5% “gross return” and a 4.3% “net return” for the month (through February 23).

128. Up through and including the February 27 e-mail, Tannin and BSAM explicitly reassured Barclays about the Enhanced Fund’s positive, “best month ever.” This was at a time, February 2007, of extreme volatility and dropping prices in ABX indices that track the performance of bundles of asset-backed debt securities, particularly those tied to sub-prime debt.

129. Tannin and BSAM, with these February 2007 statements, thereby added to BSAM’s representations, made since the inception of Barclays’ involvement, about BSAM’s stellar abilities to control risk and to use portfolio hedges and other strategies to produce positive results, even when related structured credit markets were performing badly.

130. Tannin and BSAM deceived Barclays about the Enhanced Fund’s purported February performance to secure Barclays’ increased financial commitment to the Enhanced Fund structure just days later.

BARCLAYS INCREASES ITS COMMITMENT IN MARCH, AT BSAM’S REQUEST

131. On or about February 26, BSAM requested that Barclays provide an additional, significant financial commitment to the structure on March 1, 2007. Relying on all of the positive information and all of the representations it had received from Tannin and BSAM, Barclays did so on March 1.

132. BSAM requested another, equally sizable commitment to be executed on March 15, 2007. When BSAM requested from Barclays the additional March 15 commitment on March 8, Tannin represented, unsolicited, that “**Despite dramatic volatility in the structured finance**



**market our Fund has been extremely stable.** We are seeing the beginning of new asset opportunities and would like to take down additional cash.” (Emphasis added.)

133. Barclays made this second additional commitment in March to its swaps and the corresponding hedge of shares in the Enhanced Fund. It did so in reliance on BSAM’s report of extreme stability and BSAM’s representation that it had identified positive new asset opportunities, as well as the earlier representations from BSAM outlined above.

134. On or about March 27, 2007, Rao and Ware of Barclays attended a business dinner in New York with Cioffi, Tannin, and Raymond McGarrigal of BSAM. There, Cioffi, Tannin, and McGarrigal expressly reported to Rao and Ware that their strategies for the Enhanced Fund continued to perform well, and that they were starting to see desired differentiation between the results for the leveraged Enhanced Fund and the High-Grade Fund.

135. From the end of March, 2007, through mid-May, the Barclays’ risk management staff in London received periodic reports of the month-to-date from Tannin and BSAM that showed small declines in the overall value of the Enhanced Fund portfolio, ranging from -1.4% to -2.5%. Those small declines did not raise a concern for Barclays regarding its commitment to the structure and position in the Enhanced Fund, because of the backdrop of Tannin’s and BSAM’s statements about their successful hedging and other risk management strategies. The decline in the ABX indices that had occurred earlier in 2007 had turned around by April. Based on BSAM’s representations, Barclays believed the Enhanced Fund had apparently weathered well a volatile period.

136. In addition, BSAM consistently and repeatedly reported to Barclays a total NAV of close to or over a billion dollars for the Enhanced Fund, which meant that the fund would have to suffer massive losses before Barclays’ priority (first-out) stake of less than half that amount

would be at risk. For all Barclays was being told, the Enhanced Fund portfolio was performing very well, BSAM had a firm grip on risk, and BSAM was paving the way for even more success.

137. As it turns out, the Enhanced Fund was not performing as well as Tannin and BSAM had represented; and BSAM's marks for assets were exaggerated and unreliable. Furthermore, the BSAM Defendants were using and wanted to continue to use Barclays' capital for their own purposes (*e.g.*, purchasing multiple tranches of new CDOs for which BSAM had accumulated the underlying assets) and for Bear Stearns' similar underwriting goals, without Barclays realizing that they were doing so to its detriment.

138. Likewise, as described above, in the midst of the Enhanced Fund's plummeting performance in February and March 2007, Cioffi reportedly withdrew millions of dollars of his own money from the Enhanced Fund, while publicly making "optimistic forecasts about the portfolio's prospects."

139. Cioffi, and the other BSAM Defendants, therefore, had to keep the deception going. Tannin and BSAM misrepresented the Enhanced Fund's February performance to secure Barclays' significantly increased financial exposure, and misrepresented the Enhanced Fund's March, April and May performances to keep Barclays in the structure, to hide self-dealing, and (by at the latest April) to hide BSAM's sharply failing investment structure from Barclays, Feeder Fund investors, and the public. For these reasons, among others, Tannin and BSAM intentionally, or at a minimum recklessly, misrepresented the Enhanced Fund's performance in their statements and reports to Barclays about February, March, April, and May results, alleged above.

140. The BSAM Defendants were trying to buy time to stabilize the Enhanced Fund and to use it for their own and Bear Stearns' self-dealing purposes, as discussed further below. In addition,

the BSAM Defendants' professional reputations and their financial rewards depended on the Enhanced Fund's success. Risk management of portfolio assets such as those in the Enhanced Fund was supposedly their specialty, and the Enhanced Fund was supposedly their most advanced, innovative investment fund. For all these reasons, among others, BSAM and Tannin deceived Barclays.

BSAM'S DELAYS OF THE FUND ADMINISTRATOR'S MONTHLY REPORTS

141. During this same period, there was another facet to BSAM's hiding from Barclays the true performance facts and unstable nature of the portfolio in the Enhanced Fund, as well as BSAM's breach of its fiduciary duties to Barclays.

142. From December 2006 through July 2007, the fund administrator's required monthly or semi-monthly NAVs for the Enhanced Fund each were long delayed or never came at all.

(Semi-monthly NAVs were required under the Confirmations, as amended, between December 2006 and March 2007.) Under the Investment Guidelines, the Reporting Requirements and the Confirmations, the Enhanced Fund administrator PFPC Inc. ("PFPC") was to deliver NAVs to Barclays based on independent pricing shortly after each relevant dealing date. PFPC, however, did take its direction from BSAM, and eventually explained to Barclays that the delays were the fault of BSAM, as outlined below.

143. The Confirmations call for the NAVs from the fund administrator to issue at least on a monthly basis and by the fifteenth day following a relevant "dealing date." The operative dealing date at the beginning of the transaction was the first of the month, then became the first and fifteenth of the month, and after a Confirmation amendment in late March 2007 was the third of each month.