

144. The report from PFPC for the month of December (triggered by the dealing date on January 1), however, was not released until late February, long after the fifteen-day deadline. That report showed a 1.60% increase in the fund for the month of December. PFPC later revised that result to show a 1.76% increase.

145. Simran Sethi of Barclays in London regularly followed up by e-mail and by phone with PFPC and BSAM for the administrator's NAV reports. PFPC initially reported that the delay in the December report was due to year-end processing issues; but the delay in December was repeated in the subsequent months.

146. When Sethi spoke with Tannin in early 2007 about the lack of timely reports from the fund administrator, Tannin said that Barclays should rely on the numbers that BSAM was directly providing to Barclays for periods when the administrator report was not available.

147. Sethi and Barclays, however, sought reports from the administrator as well. They did this because the administrator was supposed to be obtaining **independent** pricing of the portfolio instruments, under the terms of the Investment Guidelines, and because administrator NAVs were required under the Confirmations.

148. On or about April 2, 2007, for example, after many previous calls and emails about the delayed administrator reporting, Sethi wrote her contacts at PFPC and copied Tannin:

I would really appreciate if you could reply to my mail below [dated March 29]. Even the February NAVs are overdue now and we are still waiting for January NAVs.

Could you please let us k[n]ow the reason for delay each month and what we can do to resolve this ASAP.

149. Neil Rosen of PFPC responded that the January NAV was still being calculated and that the delay resulted from "waiting for pricing on one of the underlying securities."

150. Sethi followed up with numerous emails and calls to PFPC and Tannin to try to resolve the slow reporting by proposing that PFPC set a cut-off date and use an estimate or the previous month's valuation for one or two missing prices by that date. Tannin's approval was necessary for PFPC to proceed in that way.

151. Tannin repeatedly communicated that he was happy to work out a more timely arrangement, and that Sethi had a "great idea;" but when Sethi subsequently followed up with either Tannin or PFPC, she could not get a resolution. Barclays now realizes that Sethi was being given the runaround by Tannin and BSAM, given the discrepancies in the February through May reporting of the portfolio's performance, and that the source of the misinformation was BSAM.

152. Sethi continued to push for the appropriate, timely fund administrator reporting. On May 8, 2007, a managing director and vice president of PFPC, Ellen Corson, addressed the situation in an e-mail to Sethi:

Currently, the Bear Stearn [sic] (BS) fund that you are requesting information on holds an investment that due to its complexity is taking a very long time to obtain a valuation. Each month, BS requires PFPC to wait until the value for the particular investment has been calculated and approved. Unfortunately, the process to value that particular investment has been delayed greatly...PFPC is not involved in the valuation of the investment and are instructed to wait for the price from the advisor. In addition, BS has not instructed PFPC to value the BS fund with an estimate price. Also, due to the nature of this investment, BS is very much aware of the issues surrounding the valuation. The delays you are expecting [sic] are not the result of PFPC service issues.

As of today, PFPC is waiting for approval from BS for February's final numbers. In addition, final valuations for the investment in question has not been finalized for March and April.

I have previously requested that BS reach out to their Barclay's [sic] contact and explain to them the issues. . . .

153. On or about May 9, 2007, Sethi and Panzeri of Barclays called Tannin and did not reach him. Sethi followed up with an e-mail to Tannin that asked “what this ‘investment’ is which takes more than three months to value.”

154. Sethi followed up with Corson at PFPC to ask her which asset supposedly caused the delay in pricing each month. Corson responded that she was not sure.

155. Tannin never identified a specific asset that was delaying the administrator’s pricing in response to Barclays’ inquiries.

156. Instead, more than a week later, on or about May 17, 2007, Tannin responded by claiming that “**We do not have ANY assets that take 3 months to value.** The volatility [sic] in the market created a problem with the dealers getting us marks. We can give PFPC our estimated NAV promptly – within 5 business days of the end of the month. I believe they are happy to pass this on to you.” (Emphasis added.) Tannin thus contradicted PFPC’s stated reason for the delay and made a new representation about BSAM’s supposed ability to timely value its assets. In any event, timely NAVs from PFPC were never forthcoming.

157. In addition, it was only through further discussions with PFPC on or about June 1 that Sethi and others at Barclays discovered that the Enhanced Fund administrator apparently had been relying on BSAM for pricing on a major portion of the assets in the Enhanced Fund. They also discovered that PFPC had not been independently pricing a major portion of the assets, as required by the Investment Guidelines, or even spot-checking them for purposes of calculating the fund administrator’s NAV reports.

158. Immediately after that discovery, Sethi called Mark Mannion, another managing director at PFPC, and stressed that the administrator’s job was to provide independent pricing. She stressed that even for estimates that might come before final numbers from PFPC, PFPC should

do random checks of those estimates, and that for final NAV pricing there had to be much less of a time lag than currently was occurring.

159. Tannin and BSAM, in breach of BSAM's and Tannin's duties to disclose and fiduciary duties to Barclays, deliberately or at least recklessly delayed the fund administrator's reporting and directed the administrator's inadequate conduct. They did so to hide from Barclays the Enhanced Fund portfolio's actual performance and the BSAM Defendants' and Bear Stearns' other improper actions, as alleged herein.

BSAM'S FEBRUARY CLAIM OF UP 5.5% REDUCED TO BELOW ZERO

160. The fund administrator on May 10, 2007, finally released its NAV for February. That report showed that the Enhanced Fund's return in February had actually been -.30% — far less than the report of a 5.5% gross or 4.3% net increase that Tannin and BSAM had conveyed to Barclays on February 27.

161. As set forth above, February had been the month in which Tannin's and BSAM's deception paved the way for Barclays to increase significantly its commitment to the structure in March.

ADDITIONAL FALSE STATEMENTS OF SUCCESSFUL HEDGING  
AND POSITIVE RETURNS

162. By at least late May 2007, Tannin apparently had serious doubts about the Enhanced Fund's viability and was considering possible ways to "sell" the Enhanced Fund and the High-Grade Fund, including to a third party investment company, Cerberus, before the funds were completely "wiped out."

163. Despite concerns that the Enhanced Fund was on the verge of failure, BSAM and Tannin continued to conceal the Enhanced Fund's true performance through false reports of successful hedging and positive returns on the portfolio.

164. At or about the beginning of June 2007, Tannin called Barclays' Ware to tell him about an imminent publication in *Hedge Fund Alert*. Tannin told Ware that an article was about to come out that said that BSAM had "gated" (*i.e.*, suspended) investor redemptions from the Feeder Funds.

165. Tannin represented to Ware that this statement about gating was untrue. He stated that BSAM was considering gating, but had not done so. (On June 22, 2007, however, Bear Stearns Companies' Chief Financial Officer, Samuel Molinaro, said in an analyst conference call that he believed that investor redemptions were suspended sometime in May.)

166. In or about early June, Panzeri and Ware spoke further with Tannin. Tannin told Panzeri and Ware that BSAM was working to reduce an over-concentration of CDOs in the portfolio, to curtail exposure to CDO-squared securities specifically, and to divert investment to structured credits with physical underlying assets.

167. Panzeri emphasized to Tannin that BSAM had to take all steps necessary to bring the portfolio within the Investment Guidelines and had to make sure that Barclays was getting timely NAVs.

168. Tannin also claimed in early June, again, that the portfolio's hedges were working. He told Panzeri and Ware that there had been a slight lag in response, but now the portfolio had bounced, the hedges were catching up, and the Enhanced Fund was performing well. As later became clear, Tannin and BSAM were still intentionally, or at a minimum recklessly, misstating the portfolio's status as of June 2007 to Barclays for all of the same reasons outlined above.

169. On June 7, PFPC released the final April NAV to Barclays. The administrator's report revealed a drop of more than 11% in the Enhanced Fund. This was more than four times greater a loss than BSAM's worst report of the fund's performance to date—*i.e.*, the -2.5% figure that BSAM provided to Barclays in late April. On June 7, PFPC also released revised March results of -3.6%.

170. BSAM had failed to abide by its representations and commitments, leaving Barclays to learn from PFPC long after the fact about a drop in the NAV of more than 10%. Under the Reporting Requirements, BSAM was required to notify Barclays as soon as it reasonably could of "any change in circumstances, which **might** cause the final monthly NAV of the Reference Fund to show a loss in value equal to or more than 10%." (Emphasis added.) Instead, BSAM and Tannin engaged in deliberate deception to hide the Enhanced Fund's falling NAV for as long as possible.

171. Barclays had the ability under the swap agreements and its hedge to terminate the transaction and wholly withdraw from the structure based on written notice given at least two business days before a dealing date, if a termination event as listed in the Confirmations occurred. A material change in the risk profile of the fund without Barclays' consent or a breach of the Investment Guidelines (with no agreed-upon plan to cure) are among the many possible termination events.

172. It is inconceivable that BSAM did not know long before **June 7** of a "change in circumstances" that might – and actually did – significantly affect **April's** results, especially given BSAM's supposed daily surveillance of the portfolio and its apparent ongoing interactions with the administrator with regard to pricing. Yet Barclays heard of this 11.3% drop only through PFPC's June 7 correspondence to Barclays.

173. In addition, Robert Ervin of BSAM, on or about June 8, came back to Angus McIsaac of Barclays with a claimed new, positive report. BSAM reported in that June 8 transmittal that the returns on the portfolio in May were up 2.7%. (Subsequent disclosures by BSAM and PFPC – in mid-July – showed that the Enhanced Fund, in reality, had lost more than 38% of its value in May.)

174. On or about **June 14**, an even more positive report came from Ervin of BSAM in an email to McIsaac of Barclays, with Tannin copied. Ervin, couching results for the first time as “internal estimates,” sent Barclays a **BSAM spreadsheet that showed gains through June 12 of almost 6%**. It also showed a total NAV of more than \$950,000,000.

175. On or about June 14, however, BSAM was also hosting a meeting of “repo” agreement counterparties with claims on certain portfolio assets to try to negotiate grace. It is inconceivable that when Ervin sent the report of a gain of 6% for June, BSAM, Cioffi and Tannin and their staff did not realize the Enhanced Fund portfolio was going even more sharply down instead of up and that the fund was in imminent danger of adverse actions by repo counterparties.

176. BSAM, through Ervin, on June 8 and 14 engaged in deliberate deception of Barclays, or at a minimum extreme recklessness and breach of the BSAM Defendants’ fiduciary duties to Barclays, by telling Barclays that the Enhanced Fund was up for May and again up almost 6% through June 12.

177. In reality, the portfolio’s asset values were plummeting. As noted above, PFPC disclosed, in a notice dated July 17, 2007, that the Enhanced Fund fell by more than 38% in May. BSAM in mid-July admitted to Feeder Fund investors that their investment had been wiped out completely by the end of June. The value of Barclays’ investment, at a minimum, had been severely diminished by the end of June, according to BSAM’s revelation in mid-July.

178. By misrepresenting the supposed ongoing success of BSAM's hedging and portfolio risk management, by misrepresenting the portfolio's performance numbers and asset values, and by misrepresenting BSAM's portfolio restrictions and characteristics (as specifically promised to Barclays), among other things, BSAM and Tannin caused losses to Barclays. Tannin and BSAM did so intentionally, or at least recklessly, to keep Barclays in the structure, to hide their troubles, and to continue to try to buy time, for all the reasons alleged herein, until time ran out with the repo lenders.

179. Likewise, BSAM, Cioffi and Tannin – by undertaking excessive, directional portfolio risk, by erroneously marking asset values, by failing to fill the portfolio with high quality assets (and instead causing the Enhanced Fund to become a dumping ground for especially risky assets, including numerous CDO-squared securities and other toxic assets, many acquired through transactions in which a Bear Stearns Companies' entity played an additional role), by acting contrary to the agreed-upon portfolio limitations, and by failing timely to inform Barclays of the true performance of the portfolio, among other things – breached their special fiduciary duties to and were grossly negligent in causing losses to Barclays.

BEAR STEARNS' AND BSAM'S SELF-INTERESTED USE OF THE FUND

180. This extraordinary fraud and breach of the investment manager's fiduciary duties personal to Barclays was not the result of BSAM's, Cioffi's and Tannin's actions alone.

181. It is now apparent that Bear Stearns and BSAM agreed to work together to use the Enhanced Fund for their own purposes, rather than as a structure that would protect or advance the interests of Barclays and, indirectly, the investors in the Feeder Funds. Later, Bear Stearns Companies, too, became involved to the detriment of Barclays by, among other things, taking actions to benefit the High-Grade Fund and to harm the Enhanced Fund as it struggled to cope



with the June 2007 crisis, contrary to BSAM's specific fiduciary obligations and duties owed to Barclays.

182. As discussed above, the Massachusetts Securities Division has been investigating numerous securities trades by Bear Stearns entities with the funds, including "whether troubled securities positions were offloaded onto [the funds'] investors," and has recently filed an administrative complaint based on the hundreds of transactions that BSAM caused the High-Grade Fund and/or Enhanced Fund to undertake with Bear Stearns and other entities that BSAM controlled or managed, in violation of federal and state laws, including anti-fraud laws.

183. Indeed, Bear Stearns and BSAM used the Enhanced Fund as a place to dump certain risky Bear Stearns assets, to Barclays' detriment. For example, it has now come to light that on or after the last day of February 2007, the Enhanced Fund bought all the securities in several tranches of a CDO-squared deal (with a combined price of approximately \$140 million) – investments not permitted under the Investment Guidelines promised to Barclays – that was underwritten by Bear Stearns.

184. Similarly, in other self-dealing in May 2007, Bear Stearns sold large portions of two tranches of another offering that it was underwriting into the Enhanced Fund. This was during the period when BSAM and PFPC now say the previously-claimed value of the Enhanced Fund was quickly unraveling.

185. As Bear Stearns Companies' public statements and actions in June 2007 have indicated, and a comparison of the two portfolios reveals, during the months prior to June 2007 BSAM was funneling higher quality assets to the High-Grade Fund and accepting excessively risky or troubled assets at inflated prices in the Enhanced Fund. BSAM was collecting inappropriate risks and overstated marks in the Enhanced Fund despite BSAM's professed surveillance

strategies that applied equally to both funds and despite its fiduciary duties to Barclays.

Moreover, BSAM had promised Barclays that it would place higher quality assets in the Enhanced Fund, not the other way around.

186. In addition, BSAM even more blatantly caused the Enhanced Fund to buy **all** the securities in **all** the tranches of an April 18, 2007, Tahoma CDO-squared offering (with a combined price of approximately \$150 million) that BSAM was managing. This means that no independent third-party market participant priced these securities or ascertained their fair market value; instead, BSAM caused the Enhanced Fund to purchase them at non-arms-length prices.

187. Moreover, given that BSAM was purchasing all of the offering for the Enhanced Fund, BSAM instead could have caused the Enhanced Fund to buy the underlying assets or similar assets directly, and avoided the more risky, superfluous (and impermissible under the Investment Guidelines) CDOs-within-a-CDO structure. In addition, in the CDO markets, it is highly unusual for a CDO structure manager to retain in its own investment funds all of an offering for which it accumulated the assets and for which it will serve as the CDO manager.

188. BSAM was accumulating illiquid assets in the Enhanced Fund that were sold into that fund in non-arms-length arrangements, in order to help BSAM succeed in other roles. In the process, BSAM was collecting fees as the CDO arranger and manager, and collecting another set of fees from the Enhanced Fund structure. BSAM also was violating its specific representations, commitments and agreements to Barclays.

189. Likewise, as late as **May 24, 2007**, when it turns out that the value of the Enhanced Fund was plunging, BSAM caused the Enhanced Fund to buy large portions of the securities (with a combined price of almost \$500 million) from **the six riskiest tranches** (omitting only the A1A tranche) of another CDO-squared offering, BSAG 2007-1A, for which BSAM served as

manager. BSAM caused the Enhanced Fund to purchase the majority of each of those six tranches, and then had the High-Grade Fund purchase the remainder of each tranche.

190. Again, no independent third-party market participant priced these securities or ascertained their fair market value; instead, BSAM caused the Enhanced Fund to purchase them at non-arms-length prices. Moreover, BSAM instead could have caused the Enhanced Fund and the High-Grade Fund to buy the underlying assets or similar assets directly, and avoided the superfluous, impermissible CDO-squared structure.

191. BSAM was causing the Enhanced Fund to invest almost \$500 million on impermissible, very risky assets at a time – late May 2007 – when it knew that the Enhanced Fund was already in serious trouble.

192. All of these 2007 purchases of multiple tranches indicate that the Enhanced Fund was being used by BSAM to purchase assets that could not otherwise find a market at the prices BSAM was willing to cause the Enhanced Fund to pay. The later transactions, furthermore, extracted cash from the Enhanced Fund to benefit the defendants just before the fund completely failed, to the unique detriment of Barclays.

193. These securities went into the Enhanced Fund portfolio because that BSAM-controlled fund provided the “best” opportunity for BSAM and its underwriting partners on these deals to gain a high price for their offerings and take cash from the fund, as well as an opportunity for BSAM and the underwriters to attempt to maintain their reputations as successful deal makers in structured credit. Now these securities and prices have been exposed as “toxic” for Barclays and its financial stake in the Enhanced Fund structure.

194. Bear Stearns’, Cioffi’s, and BSAM’s harmful self-dealing and conflicts of interest are also apparent in their Everquest Financial Ltd. machinations. Those defendants tried to conceal

their harmful conduct in the Enhanced Fund by transferring some of the fund's highest-risk assets – CDOs of CDOs that contained the lowest rated tranches and unrated “equity” – out of the fund and into another new BSAM-led entity, Everquest. These defendants then planned to have Everquest sell shares that would transfer a significant part of the risk in these dangerous investments onto third-party public investors through a \$100 million IPO of Everquest in mid-2007 (though Barclays, in the Enhanced Fund, would still be saddled with shares in Everquest as of the date of the IPO).

195. At all relevant times, Everquest was jointly run by BSAM and Stone Tower LLC. Cioffi, in addition to his roles at BSAM with regard to the Enhanced Fund, was the co-chief executive of Everquest.

196. On May 9, 2007, Everquest filed a Form S-1 with the Securities and Exchange Commission (“SEC”) for its planned IPO. Everquest's filing disclosed that a significant portion of the assets (valued by Everquest and BSAM at \$548.8 million) in its approximately \$720 million portfolio had been purchased in 2006 from the High-Grade Fund and the Enhanced Fund. In return, the funds received 16 million shares of Everquest (valued by Everquest and BSAM at \$25 per share) and \$148.8 million in cash. As of the date of the S-1, that filing discloses that the funds retained their 16 million shares in Everquest.

197. The largest transfer from the BSAM Enhanced and High-Grade Funds to Everquest involved the lower (*i.e.*, riskier) tranches of Parapet, a BSAM-managed vehicle that created CDOs out of CDO-squared and other CDO securities, many of which were also from vehicles managed by BSAM.

198. The Everquest S-1 listed Cioffi as the “beneficial owner” of Everquest shares. In addition, Everquest disclosed that, upon the IPO, BSAM and Stone Tower would each receive

new share grants representing 2.5% of Everquest's outstanding shares for the managers and/or employees, which include Cioffi. Therefore, Cioffi stood to benefit personally from the IPO.

199. BSAM also benefited from the Everquest arrangement because it was entitled to management and incentive fees from Everquest, in addition to its fees associated with the Enhanced Fund structure. Likewise, Bear Stearns would benefit from an Everquest IPO through its underwriting fees.

200. Shares in Everquest are not a permitted investment under the Investment Guidelines, and indeed such shares have never appeared on the portfolio reports for the Enhanced Fund given to Barclays by BSAM, despite the disclosure of share ownership to the SEC in the Form S-1. In addition, as a large unrated investment in a single issue, the Enhanced Fund's apparent ownership stake in Everquest far exceeded allocation limitations set by the Investment Guidelines.

201. Everquest's S-1 filing – like BSAM's direct reports to Barclays on the Enhanced Fund from the same period – omitted critical disclosures that would have had a significant adverse effect on the amount Bear Stearns, Cioffi, and BSAM could realize from an IPO. Neither Everquest's filing nor BSAM's reports on the Enhanced Fund to Barclays through May 2007 disclosed, for example, that the Enhanced Fund had suffered significant losses in April 2007 as the Everquest and other similarly shaky assets lost value.

202. BSAM, Everquest and its planned IPO disregarded Barclays' interests, and the Everquest plan instead was designed to generate fees or other income for BSAM, Cioffi, and the Bear Stearns entities.

203. Indeed, even Bear Stearns Companies' or Bear Stearns' managing directors viewed Everquest with great skepticism by mid-June 2007. During a "town hall" meeting for Bear

Stearns' managing directors on or about June 22, one of those managing directors reported that the overall sense among the managing directors at the meeting was extreme skepticism regarding Everquest's construct and purpose. According to this managing director, the managing directors expressed the belief that BSAM was improperly trying to offload poor quality CDOs through the Everquest IPO. The June 22 meeting attendees also openly questioned whether the BSAM portfolios in general were "dumping grounds" for toxic assets, including many Bear Stearns-related assets.

204. Others at the "town hall" opined that BSAM and its funds would have been fine if BSAM had been able "to offload its risk to the public" through the Everquest IPO.

205. However, on or about June 25, 2007, amid an onslaught of negative press reports surrounding the deteriorating High-Grade and Enhanced Funds and the terrible quality of the assets that had been dumped into Everquest, Everquest withdrew its planned offering. Therefore, no Everquest shares left the Enhanced Fund; and the fund remained indirectly invested in the worst tranches of the Parapet CDO of CDOs and other troubled assets into at least July 2007, to Barclays' detriment.

206. Indeed, press reports described the now-aborted Everquest IPO as "an unprecedented attempt by a Wall Street house to dump its mortgage bets." *See* Matthew Goldstein, *Bear Stearns Subprime IPO: Everquest Financial is Going Public with Risky Mortgage Bets Purchased from Its Underwriter's Hedge Funds*, [www.BusinessWeek.com](http://www.BusinessWeek.com), May 11, 2007; *see also* Carolyn Sargent, *Behind Bear's Big Fall*, [www.absolutereturn.net](http://www.absolutereturn.net), September 2007 ("Bear allowed [Cioffi] . . . to stuff his funds with Bear-originated collateralized debt obligations that he allegedly helped form. Bear even helped Cioffi set up a company to purchase shaky securities from the funds when the market began to crack."); Alistair Barr, *Everquest IPO Tied to Troubled*

*Bear Hedge Fund: Cioffi's Fund Transferred Risky Mortgage Derivatives to Firm He Helps Run*, www.MarketWatch.com, June 15, 2007 (one CDO expert quoted as saying, "If the stories are correct about the problems at the fund, it sounds like they off-loaded the riskiest positions to Everquest[.]")

207. Cioffi, Tannin and BSAM breached their unique fiduciary duties to Barclays through all of the above self-dealing and self-interested behavior that harmed Barclays. Bear Stearns conspired with those BSAM Defendants to do so, and stood to gain from its related underwritings, including of Everquest.

208. In addition, as described above, Cioffi is under investigation by federal prosecutors for insider trading with the Enhanced Fund in order to save millions of dollars of his own personal investment in the fund. Cioffi's actions occurred at the same time BSAM and Tannin were deceiving Barclays into increasing its financial commitment and/or remaining invested in the Enhanced Fund structure, and months before BSAM's public revelations regarding the fund's *true financial condition*.

209. Tannin and BSAM also intentionally deceived Barclays throughout early 2007 and into the meltdown in June to cover their harmful behavior, to allow BSAM and Bear Stearns time to accomplish the Everquest IPO, and to otherwise use the Enhanced Fund as a vehicle for holding troubled Bear Stearns- or BSAM-affiliated assets at exaggerated prices.

210. BSAM's structured credit funds, until their enormous mid-2007 troubles, and BSAM's purported expertise in structured credit comprised the heart of BSAM's name on "the Street." To keep from losing what they had built, Cioffi, Tannin and BSAM attempted to juggle their furtherance of broader Bear Stearns, BSAM and selfish purposes with the goal of somehow

turning the funds around and maintaining their reputations. To do that, the BSAM Defendants kept their portfolio and performance errors hidden from Barclays for as long as possible.

211. The nature of the actions alleged above indicates that other individuals, yet to be specifically identified, at Bear Stearns, BSAM and/or Everquest also were likely involved in knowingly assisting and implementing the BSAM Defendants' breach of their fiduciary duties to and deception of Barclays, and perpetuating Bear Stearns' improper self-dealing to Barclays' detriment.

212. In the months since the July 2007 revelation, BSAM and certain of the other defendants have been sued in numerous lawsuits and/or arbitrations involving investments in the Enhanced Fund and/or High-Grade Fund structures, alleging, among other things, concealment of the funds' problems from investors, failure to disclose related-party trades, and the failure to disclose risks associated with illiquid securities held in the funds. Likewise, investigations by federal and state enforcement authorities surrounding the funds' collapse reportedly have increased significantly in number and continue to expand in scope as details come to light regarding the events leading up to the funds' troubles. As discussed above, one such investigation by state officials has already resulted in a complaint against BSAM alleging violations of federal and state law, including anti-fraud statutes.

**FURTHER BREACHES AND MISREPRESENTATIONS,**

**AND BEAR STEARNS COMPANIES' SACRIFICE OF BARCLAYS' STAKE**

213. By on or about June 14, 2007, counterparties in transactions involving the underlying portfolio assets had realized that there was reason for concern about the future of the High-Grade Fund and the Enhanced Fund and demanded meetings with BSAM.



214. Barclays itself was concerned about whether BSAM would take all appropriate steps to stabilize the Enhanced Fund, would try to avoid rushed asset sales, and would ensure that any necessary asset disposition be orderly. Barclays was also concerned about whether it would be provided with full information at every step, and whether every action would be taken to protect Barclays in accordance with BSAM's special duties to it.

215. On or about June 15 and June 16, Richard Ho of Barclays spoke with Tannin about those concerns. On or about June 17, Barclays received its last portfolio spreadsheet of the Enhanced Fund's assets from BSAM, dated June 15. This portfolio report (as revealed by subsequent disclosures by BSAM and PFPC) vastly overstated the asset values in the Enhanced fund. Thus, BSAM's intentional deception continued.

216. From June 17 onward, John Mahon and Mark Manski of Barclays took the lead for Barclays in trying to get additional information and cooperation from BSAM. These and other Barclays' executives repeatedly attempted to reach Richard Marin, then still the chief executive of BSAM, but did not succeed in talking with him until on or about June 20. Mahon eventually spoke with Marin approximately six times, up to the beginning of July. Mahon and Manski also spoke or attended meetings in New York with The Blackstone Group, which had been retained by BSAM to assist it in the crisis, and with other BSAM representatives, every day from June 18 through at least June 22, 2007.

217. On June 18, BSAM and Blackstone still were representing to Barclays that the equity in the Enhanced Fund would be sufficient to make Barclays whole. By June 25, however, Marin told Mahon that there might be only \$150 million value left in the Enhanced Fund, between assets and the Everquest shares. By June 26, Marin revealed that yet more probable losses had occurred, saying that the \$150 million had been book value, not actual value.

218. Despite all of the affirmative efforts by Barclays to obtain information, and despite BSAM's obligations under its prior commitments to Barclays, Barclays never succeeded in obtaining even basic confirmation of what was occurring during this June 2007 period with the Enhanced Fund. Marin and others would profess to Barclays BSAM's willingness to provide ongoing information, and made specific promises to Barclays that it would do so, but vital information was never forthcoming.

219. For example, Mahon asked Marin for a list of the Enhanced Fund's unencumbered assets. Marin promised to provide that list, but never did.

220. In addition, at one point Marin admitted to Mahon that BSAM did not know how to value various CDO equity positions in the Enhanced Fund portfolio.

221. As the crisis continued, Mahon also asked for specific information on the initial deals that BSAM had made with counterparties and for the marks on assets that had been included in those deals. Again, Barclays never received that information.

222. Finally, on June 22 Mahon sent a letter to BSAM, again asking for up-to-date information about the NAV of the Enhanced Fund, unencumbered assets, deals that had already been concluded, and any "issues hampering reaching agreements with other counterparties." BSAM did not respond to Mahon's letter or provide any of the requested information, save for isolated bits of information about remaining assets and a few counterparty transactions conveyed on July 19, 2007.

223. From June 15 onward, Barclays indicated its willingness to help BSAM navigate and weather the crisis. Mahon and others told BSAM that Barclays had a team of people that could immediately go to BSAM to assist it in stabilizing the Enhanced Fund (and thereby protect Barclays' stake in the structure).

224. From June 15 onward, Ho, Mahon and Manski emphasized to BSAM that it should do everything possible to avoid asset sales and to avoid counterparty banks breaking ranks to sell their assets hurriedly, which would cause a downward spiral. BSAM did not do so.

225. Moreover, in mid-June, Bear Stearns Companies stepped in to make the major decisions about what would be done to stabilize, or not, the High-Grade Fund and/or the Enhanced Fund.

226. Bear Stearns Companies and BSAM did not adequately, competently, or in good faith manage events in mid-June to stabilize the position of all the repo counterparties with regard to the Enhanced Fund, to Barclays' special detriment.

227. Bear Stearns Companies and BSAM mismanaged the relationship with Merrill Lynch, one of the repo counterparties, who ultimately broke away and began to sell assets on the open market, despite the Bear Stearns entities and Merrill being only a small amount apart in their negotiations to avoid such an outcome. The Bear Stearns entities knew this would likely trigger many further assets sales by repo counterparties.

228. In addition, Bear Stearns Companies announced that it would make \$3.2 billion in financing available to the High-Grade Fund. It later reduced that number to \$1.6 billion. Yet, at the same time, Bear Stearns Companies publicly made clear that it would allow the Enhanced Fund to fail. These decisions were made by the executive committee or other senior management of Bear Stearns Companies, and dictated to BSAM.

229. After the Merrill actions, which could have been avoided by the defendants, and the Bear Stearns Companies' announcement that it was turning its back on the Enhanced Fund, Barclays' financial stake effectively was left to the mercy of a fire-sale market. Indeed, there was a rush to the door by the repo counterparties in selling assets quickly rather than negotiating for price.

230. For example, a Cantor Fitzgerald trader trying to unload repo agreement assets told a trader from another firm that Cantor simply wanted bids, and did not care what they were.

231. The actions by Bear Stearns Companies and BSAM in allowing the Enhanced Fund to fail and allowing asset sales in a manner that destabilized the structure and did not preserve value for Barclays breached BSAM's fiduciary duties that were specific to Barclays. Bear Stearns Companies knowingly aided in that breach.

232. The nature of the actions alleged above indicates that other individuals, yet to be specifically identified, at Bear Stearns Companies and/or BSAM also were likely involved in knowingly assisting and implementing the breach of BSAM's fiduciary duties during this period, and perpetuating Bear Stearns Companies' harm to Barclays.

233. BSAM said in late June that a final NAV for May would not be released until July 16, 2007, one month late.

234. Despite the Investment Guidelines and other continuing promises to Barclays, BSAM refused to provide any other written reports or portfolio status information to Barclays prior to July 16.

235. On July 17 (even one more day later than planned), BSAM released a May NAV for the Feeder Funds and an estimated June NAV for those funds, and in doing so, revealed the devastating news that there is "effectively no value left" for the Feeder Fund investors. The release did not explain, however, how hundreds of millions of dollars in reported asset value could have vanished so quickly.

236. In a letter dated July 17, but sent by email to Simran Sethi of Barclays late on the night of July 18, PFPC reported to Barclays that the Enhanced Fund had declined 38.27% in May. PFPC did not provide a report to Barclays for June.

237. On or about July 23, Barclays hand delivered to BSAM the appropriate notice to terminate the swaps and redeem its hedge of shares in the Enhanced Fund simultaneously on the next dealing date, August 3, 2007.

238. On or about July 25, Sethi called Corson of PFPC to obtain an update on the NAV of the Enhanced Fund for June month end. Corson, however, did not provide any information, but instead told Sethi to speak with Jerry Cummins, a director of the Enhanced Fund and a managing director at BSAM.

239. On July 31, 2007, the Enhanced Fund applied to the Grand Court of the Cayman Islands for the appointment of joint provisional liquidators and commenced an insolvency proceeding.

240. After their appointment, those joint provisional liquidators then appeared *ex parte* on July 31 in the U.S. Bankruptcy Court in the Southern District of New York to seek various forms of temporary relief for the fund.

241. The July 31 papers filed by the Enhanced Fund's joint provisional liquidators in the U.S. Bankruptcy Court recounted that "[t]he Foreign Petition states that Enhanced Fund is insolvent and unable to pay its debts as they come due."

242. On August 2, 2007, BSAM, on behalf of the Enhanced Fund, faxed to Barclays a letter stating that the Enhanced Fund Board of Directors purportedly declared a suspension of the redemption of shares in the Enhanced Fund on July 25, 2007, and informed Barclays of the Cayman Islands' appointment of the joint provisional liquidators.

243. Based on Marin's last representations, information from counterparties and other non-BSAM sources, the mid-July information released by BSAM and PFPC, and ongoing reports regarding assets and liabilities from the liquidators, either all or almost all the value in the

Enhanced Fund portfolio is gone. Thus, all or almost all of Barclays' financial commitment to the structure has disappeared.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Fraud and Deceit—as to Defendants BSAM and Tannin)

244. Barclays repeats and realleges the foregoing allegations as though fully set forth herein.

245. As detailed above, defendants BSAM and Tannin made material misrepresentations of fact and/or omitted to disclose material facts in connection with Barclays' participation in the swaps and their hedge, its commitment of additional funds to the structure, and its continued participation in the transaction into July 2007.

246. Defendants BSAM and Tannin knew that their statements were false and misleading, or at a minimum were reckless in not knowing whether the statements were true, when the statements were made, and those defendants made the statements with the intent and expectation that Barclays would rely on them.

247. In the pre-closing period, BSAM and Tannin made numerous representations about their future planned actions that they knew at the time did not reflect their true intentions (in addition to their numerous misstatements of fact). They reiterated these same representations about future planned actions after the transaction commenced, again knowing that the statements did not reflect their true intentions. BSAM and Tannin did so initially to convince Barclays to close the transaction, and thus enable the whole structure and the Feeder Funds to begin operation. BSAM and Tannin did so subsequently to keep Barclays in the structure and to hide the Enhanced Fund's difficulties for as long as possible.

248. Based on their purported expertise, specialized knowledge and relationship with Barclays in connection with the swaps and hedge, defendants BSAM and Tannin owed a duty to Barclays to disclose material facts about the transaction, including in particular about the Enhanced Fund. BSAM, among other things, owed Barclays a duty to disclose the true facts regarding the nature and performance of the investment portfolio at issue, and a duty to disclose defendants' self-dealing and attendant misuse of the structure. Such information was not readily available to Barclays, and defendants BSAM and Tannin knew that Barclays was acting in reliance on mistaken information.

249. Defendants BSAM and Tannin also had a duty to correct and/or update information for Barclays.

250. Barclays reasonably relied on each of the pre-closing representations of defendants BSAM and Tannin, which, in fact, were misrepresentations. Without those material representations, Barclays would not have entered into the transaction.

251. Barclays also reasonably relied on each of the representations (which, in fact, were misrepresentations) of defendants BSAM and Tannin as Barclays increased its financial commitment to the structure and continued its participation in the transaction. Without those material representations, Barclays would instead have terminated its participation or would have required that immediate and comprehensive steps be taken by BSAM to protect Barclays' financial commitment.

252. BSAM's and Tannin's fraudulent conduct, as alleged herein, was willful, malicious, reckless, and without regard to Barclays' rights and interests.

253. As a direct, proximate and foreseeable result of BSAM's and Tannin's conduct, Barclays has been damaged in an amount to be determined at trial. As a result of BSAM's and Tannin's

conduct, Barclays is also entitled to punitive damages in an amount to be determined at trial, as well as interest at the statutory rate.

SECOND CAUSE OF ACTION

(Negligent Misrepresentation—as to Defendants BSAM and Tannin)

254. Barclays repeats and realleges the foregoing allegations as though fully set forth herein.

255. At the time BSAM or Tannin made the material misrepresentations to secure Barclays' initial participation in the transaction or to increase its financial commitment to the structure, described above, defendants BSAM and Tannin knew, or at a minimum were negligent in not knowing, that those statements were false and misleading. At a minimum, BSAM and Tannin should have known that the statements were incorrect.

256. BSAM devised the idea for the “enhanced leverage” structure and came to Barclays seeking its participation in that new structure.

257. BSAM and Tannin held themselves out as having a unique market position and special expertise with regard to the proposed transaction. The transaction proposed by BSAM and Tannin was allegedly built on their experience with the High-Grade Fund and their proprietary risk management and analysis tools.

258. BSAM and Tannin, moreover, were uniquely situated to explain the details, attributes, and conditions of the transaction and of BSAM's structured credit business practices, for BSAM was involved in and had significant control over every aspect of the planned structure, and BSAM had the best access to information about its own business practices.

259. BSAM and Tannin explicitly aimed with their representations to provide “comfort” to Barclays and thereby to convince Barclays to enter into the transaction and, subsequently, to increase its commitment to the structure.



260. BSAM and Tannin made numerous and detailed representations personal to Barclays upon which they intended Barclays to rely. BSAM and Tannin were aware, at the time of their misrepresentations, that the information they were conveying was critical to Barclays' decision-making.

261. BSAM and Tannin entered into a special relationship so close as to approach privity with Barclays. Defendants BSAM and Tannin knew that Barclays was uniquely and specially relying on BSAM's and Tannin's representations in deciding whether to participate in the structure and/or in deciding whether to increase its financial commitment to the structure. BSAM and Tannin thus owed a duty to Barclays to give Barclays accurate information and representations.

262. Barclays reasonably relied on the representations of defendants BSAM and Tannin, which, in fact, were misrepresentations. Without those material representations, Barclays would not have entered into the transaction or increased its commitment to the structure.

263. As a direct, proximate and foreseeable result of defendants BSAM's and Tannin's conduct, Barclays has been damaged in an amount to be determined at trial, as well as interest at the statutory rate.

### THIRD CAUSE OF ACTION

(Negligent Misrepresentation—as to Defendants BSAM and Tannin During Management and Operation of the Structure)

264. Barclays repeats and realleges the foregoing allegations as though fully set forth herein.

265. Once the "enhanced leverage" structure came into being and BSAM became the investment manager for the Enhanced Fund, BSAM and Tannin made myriad personal and material misrepresentations to Barclays about the performance and status of the fund or the pricing of its assets, as detailed above.

266. At the time BSAM or Tannin made those material misrepresentations, defendants BSAM and Tannin knew, or at a minimum were negligent in not knowing, that they were false and misleading. At a minimum, BSAM and Tannin should have known that the statements were incorrect.

267. Defendants BSAM and Tannin were acting as the investment manager for the Enhanced Fund, and as operators of the entire “enhanced” structure, with their claimed professional expertise. By virtue of the swap-and-hedge transaction, Barclays owns all of the participating shares in and thus has the sole direct financial stake in the Enhanced Fund. BSAM and Tannin arranged and negotiated for Barclays to have that distinct stake. With knowledge of, and specific commitments by BSAM to Barclays because of, Barclays’ unique position in the structure, these defendants’ role and duties as investment manager were undertaken specifically for the purpose of, inter alia, serving and protecting the economic interests of Barclays.

268. Barclays, as the sole participating shareholder in the Enhanced Fund, was the only target and recipient of BSAM’s reports and representations about the performance of the Enhanced Fund alleged above.

269. Barclays made its financial commitment to the structure and the Enhanced Fund after personal negotiations with defendants BSAM and Tannin about the practices and care they would use in managing the Enhanced Fund, including but not limited to the Investment Guidelines and Reporting Requirements. BSAM and Tannin, as investment manager and operator of the overall structure, established and proceeded in a special relationship so close as to approach privity with Barclays. Defendants BSAM and Tannin knew that Barclays was uniquely and specially relying on their representations, and expected Barclays to do so.

270. Similarly, BSAM and Tannin held themselves out as having a unique market position and special expertise with regard to the Enhanced Fund and its structured credit portfolio. BSAM and Tannin encouraged Barclays' special trust and confidence in them, including in their pricing expertise and their ability to report accurately and timely to Barclays on the performance of the Enhanced Fund and thus on the status of Barclays' commitment to the structure.

271. BSAM and Tannin, during their management of the fund, made numerous and detailed reports and representations to Barclays upon which they intended Barclays to rely. BSAM and Tannin were aware, at the time of their misrepresentations, that the information they were conveying was material to Barclays' decision-making, including with regard to staying in the structure or mandating actions to protect its financial stake.

272. BSAM and Tannin owed a duty to give Barclays ongoing accurate information regarding the Enhanced Fund's performance and status.

273. Barclays reasonably relied on the representations of defendants BSAM and Tannin, which, in fact, were misrepresentations. Without those material representations, Barclays would not have continued in the structure or would have required that steps be taken by BSAM to protect Barclays' financial commitment.

274. As a direct, proximate and foreseeable result of defendants BSAM's and Tannin's conduct, Barclays has been damaged in an amount to be determined at trial, as well as interest at the statutory rate.

#### FOURTH CAUSE OF ACTION

(Civil Conspiracy to Commit Fraud—as to Defendants BSAM, Cioffi and Tannin)

275. Barclays repeats and realleges the foregoing allegations as though fully set forth herein.

276. Defendants BSAM, Cioffi and Tannin, acting together, and with others at times, planned and agreed to deceive Barclays in the manner described above. These defendants knew and understood at the time of their agreement that Barclays would be injured by their wrongful conduct.

277. Defendant Cioffi was the creator and leader of the “enhanced” structure and the Enhanced Fund. Until June 2007, he was involved in all key decision-making and supervised Tannin in all Tannin’s activities with regard to the structure and fund.

278. Cioffi conspired with Tannin and BSAM to keep Barclays in the structure and to hide the Enhanced Fund’s difficulties for as long as possible. As described above, Cioffi conspired with Tannin to deceive Barclays to commit initially and remain invested in the Enhanced Fund structure to conceal the High-Grade Fund’s troubles from its own investors. Cioffi was also motivated in particular by the desire to hide his own self-dealing and insider trading with the Enhanced Fund, and to proceed with the (now-aborted) Everquest IPO and further enrich himself in the process, as well as by a desire to keep alive his fund and his reputation as a successful fund manager and expert on managing the risk of structured credit securities.

279. In furtherance of the conspiracy, these defendants affirmatively deceived Barclays and concealed the poor performance of the Enhanced Fund.

280. BSAM’s, Cioffi’s and Tannin’s fraudulent conduct, as alleged herein, was willful, malicious, reckless, and without regard to Barclays’ rights and interests.

281. As a direct, proximate and foreseeable result of these defendants’ conduct, Barclays has been damaged in an amount to be determined at trial. As a result of defendants’ conduct, Barclays is also entitled to punitive damages in an amount to be determined at trial, as well as interest at the statutory rate.

FIFTH CAUSE OF ACTION

(Breach of Fiduciary Duties Owed to Barclays—as to Defendants BSAM, Cioffi and Tannin  
During Management and Operation of the Structure)

282. Barclays repeats and realleges the foregoing allegations as though fully set forth herein.

283. Defendants BSAM, Cioffi and Tannin were acting as the investment manager for the Enhanced Fund and as operators of the entire “enhanced” structure, with their claimed professional expertise. By virtue of the swap-and-hedge transaction, Barclays owns all of the participating shares in and thus has the sole direct financial stake in the Enhanced Fund. BSAM, Cioffi and Tannin arranged and negotiated for Barclays to have that distinct stake. With knowledge of, and commitments by BSAM to Barclays because of, Barclays’ unique position in the structure, these defendants’ role and duties as investment manager were undertaken specifically for the purpose of, inter alia, serving and protecting the economic interests of Barclays.

284. Barclays made its financial commitment to the structure and the Enhanced Fund after personal negotiations with those defendants about the practices and care they would use in managing the Enhanced Fund, including but not limited to the Investment Guidelines and Reporting Requirements. BSAM specifically tailored its investment portfolio parameters to Barclays’ requirements and repeatedly stated to Barclays that BSAM would be protecting Barclays’ financial interests.

285. As discussed above, defendants BSAM and Tannin made numerous and detailed representations and assurances to Barclays. BSAM, Cioffi, and Tannin established and proceeded in a special relationship of higher trust with Barclays, a relationship that was so close as to approach privity. These defendants knew that Barclays was uniquely and specially relying

on them for their expertise and their specific commitments to Barclays in managing and operating the Enhanced Fund and the “enhanced” structure, and expected Barclays to do so.

286. Given defendants BSAM’s, Cioffi’s and Tannin’s role as investment manager for the portfolio that represented Barclays’ stake in the structure, their particularized promises and representations to Barclays, their claimed unique market position and expertise with respect to the investments at issue, and the proprietary methodology they used in creating and monitoring the asset portfolio, these defendants owed a fiduciary duty to give Barclays ongoing accurate information about the performance and status of the Enhanced Fund. Barclays justifiably placed trust and confidence in BSAM, Cioffi, and Tannin to do so.

287. Under the circumstances of this case, alleged in detail above, Defendants BSAM, Cioffi, and Tannin also each owed specifically to Barclays the duty to exercise due care and diligence in the management and operation of the Enhanced Fund, and in the use and preservation of Barclays’ assets, consistent with BSAM’s specific commitments to Barclays. These defendants also owed to Barclays duties of full and candid disclosure of all material facts with regard to the Enhanced Fund, duties of loyalty to Barclays, and duties to deal fairly and honestly with Barclays. Barclays justifiably placed trust and confidence in BSAM to act in accordance with those duties.

288. Because Barclays effectively ceded to these defendants control over and discretion with regard to Barclays’ financial exposure to the Enhanced Fund, subject to the Investment Guidelines and Reporting Requirements, and participated in the “enhanced” structure only because of BSAM’s specific representations to Barclays, these defendants were obligated to ensure that they invested in accordance with their commitments to Barclays, that they placed Barclays’ interests ahead of their own, and that they did not engage in any fraudulent, grossly

negligent, negligent, excessively risky, or imprudent investment practices to the detriment of Barclays.

289. By engaging in the conduct alleged herein, including but not limited to false reports; failures to disclose; taking on excessive risk and breaching the Investment Guidelines; engaging with Bear Stearns and BSAM in transactions harmful to Barclays that involved a conflict of interest or self-dealing; and overvaluing assets in and later dissipating assets of the Enhanced Fund, all contrary to their commitments that were personal to Barclays, defendants BSAM, Cioffi and Tannin breached their fiduciary duties to Barclays.

290. BSAM's, Cioffi's and Tannin's conduct, as alleged herein, was willful, malicious, reckless, and without regard to Barclays' rights and interests.

291. As a direct, proximate and foreseeable result of BSAM's, Cioffi's and Tannin's conduct, Barclays has been damaged in an amount to be determined at trial. As a result of BSAM's, Cioffi's and Tannin's conduct, Barclays is also entitled to punitive damages in an amount to be determined at trial, as well as interest at the statutory rate.

#### SIXTH CAUSE OF ACTION

(Gross Negligence and Negligence With Regard to Barclays—as to Defendants BSAM, Cioffi, and Tannin During Management and Operation of the Structure)

292. Barclays repeats and realleges the foregoing allegations as though fully set forth herein.

293. Defendants BSAM, Cioffi and Tannin were acting as the investment manager for the Enhanced Fund and as operators of the entire “enhanced” structure, with their claimed professional expertise. By virtue of the swap-and-hedge transaction, Barclays owns all of the participating shares in and thus has the sole direct financial stake in the Enhanced Fund. BSAM, Cioffi and Tannin arranged and negotiated for Barclays to have that distinct stake. With

knowledge of, and commitments by BSAM to Barclays because of, Barclays' unique position in the structure, these defendants' role and duties as investment manager were undertaken specifically for the purpose of, inter alia, serving and protecting the economic interests of Barclays.

294. Barclays made its financial commitment to the structure and the Enhanced Fund after personal negotiations with those defendants about the practices and care they would use in managing the Enhanced Fund, including but not limited to the Investment Guidelines and Reporting Requirements. BSAM specifically tailored its investment portfolio parameters to Barclays' requirements and repeatedly stated to Barclays that BSAM would be protecting Barclays' financial interests.

295. As discussed above, defendants BSAM and Tannin made numerous and detailed representations and assurances to Barclays. BSAM, Cioffi, and Tannin established and proceeded in a special relationship of higher trust with Barclays, a relationship that was so close as to approach privity. These defendants knew that Barclays was uniquely and specially relying on them for their expertise and their specific commitments to Barclays in managing and operating the Enhanced Fund and the "enhanced" structure, and expected Barclays to do so.

296. Given defendants BSAM's, Cioffi's and Tannin's role as investment manager for the portfolio that represented Barclays' stake in the structure, their particularized promises and representations to Barclays, their claimed unique market position and expertise with respect to the investments at issue, and the proprietary methodology they used in creating and monitoring the asset portfolio, these defendants owed a duty of care to give Barclays ongoing accurate information about the performance and status of the Enhanced Fund. Barclays justifiably placed trust and confidence in BSAM, Cioffi, and Tannin to do so.



297. Under the circumstances of this case, alleged in detail above, defendants BSAM, Cioffi, and Tannin also each owed specifically to Barclays duties to exercise due care and diligence in the management and operation of the Enhanced Fund, and in the use and preservation of Barclays' assets, consistent with BSAM's specific commitments to Barclays. Barclays justifiably placed trust and confidence in BSAM to act in accordance with those duties.

298. Because Barclays effectively ceded to these defendants control over and discretion with regard to Barclays' financial exposure to the Enhanced Fund, subject to the Investment Guidelines and Reporting Requirements, and participated in the "enhanced" structure only because of BSAM's specific representations to Barclays, these defendants were obligated to ensure that they invested in accordance with their commitments to Barclays, that they placed Barclays' interests ahead of their own, and that they did not engage in any grossly negligent, negligent, excessively risky, or imprudent investment practices to the detriment of Barclays.

299. By engaging in the conduct alleged herein, including but not limited to false reports; taking on excessive risk and breaching the Investment Guidelines; engaging with Bear Stearns and BSAM in transactions harmful to Barclays that involved a conflict of interest or self-dealing; and overvaluing assets in and later dissipating assets of the Enhanced Fund, all contrary to their commitments that were personal to Barclays, defendants BSAM, Cioffi and Tannin breached their duties of care to Barclays.

300. The BSAM Defendants were grossly negligent, or at a minimum negligent, toward Barclays in doing so.

301. BSAM's, Cioffi's and Tannin's conduct, as alleged herein, was willful, malicious, reckless, and without regard to Barclays' rights and interests.

302. As a direct, proximate and foreseeable result of BSAM's, Cioffi's and Tannin's conduct, Barclays has been damaged in an amount to be determined at trial. As a result of BSAM's, Cioffi's and Tannin's gross negligence, Barclays is also entitled to punitive damages in an amount to be determined at trial, as well as interest at the statutory rate.

SEVENTH CAUSE OF ACTION

(Promissory Estoppel—as to Defendant BSAM)

303. Barclays repeats and realleges the foregoing allegations as though fully set forth herein.

304. BSAM made clear and unambiguous promises to Barclays in the Investment Guidelines and the Reporting Requirements, which were the result of months of negotiations between BSAM and Barclays and which were reduced to writing and annexed to the Confirmations in order to memorialize BSAM's promises to Barclays.

305. BSAM, in addition, reiterated and reaffirmed those promises to Barclays throughout the history of the transaction.

306. Barclays reasonably and foreseeably relied on BSAM's promises to Barclays by entering into the transaction.

307. Barclays further reasonably and foreseeably relied on BSAM's promises to Barclays by increasing its financial commitment to the structure and by continuing to participate in the transaction into July 2007.

308. BSAM did not abide by, fulfill or keep its promises to Barclays, as detailed above.

309. BSAM's conduct, as alleged herein, was willful, malicious, reckless, and without regard to Barclays' rights and interests.

310. As a direct, proximate and foreseeable result of Barclays' reliance on BSAM's promises, as memorialized in the Investment Guidelines and Reporting Requirements (and elsewhere, as

described above), Barclays has been damaged in an amount to be determined at trial. As a result of BSAM's conduct, Barclays is also entitled to punitive damages in an amount to be determined at trial, as well as interest at the statutory rate.

EIGHTH CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duties Owed to Barclays—as to Defendant  
Bear Stearns)

311. Barclays repeats and realleges the foregoing allegations as though fully set forth herein.

312. As shown above, under the circumstances of this case, defendants BSAM, Cioffi and Tannin owed fiduciary duties specifically to Barclays.

313. In engaging in the conduct alleged herein, BSAM, Cioffi and Tannin repeatedly breached their fiduciary duties to Barclays.

314. Bear Stearns knew that BSAM and its managers, Cioffi and Tannin, owed specific fiduciary duties to Barclays and understood Barclays' unique position in the structure.

315. Bear Stearns served as placement agent for the Feeder Funds, served as underwriter on the planned Everquest IPO, and served as underwriter on offerings of assets that were sold into the Enhanced Fund. In each of these capacities, Bear Stearns stood to gain financially – and aimed to guard its reputation – by hiding the performance problems of the Enhanced Fund, continuing the Enhanced Fund's operations, and continuing the Bear Stearns underwriting activities that related to that fund.

316. Bear Stearns was a critical participant in the BSAM Defendants' Everquest maneuvers; sold assets to the Enhanced Fund to serve Bear Stearns' own interests, even when the Enhanced Fund was already failing; and was central to the cover-up of the Enhanced Fund's escalating troubles.

317. In its activities as placement agent and underwriter, alleged above, and in its concealment of the performance problems in the Everquest assets and the Enhanced Fund as a whole, Bear Stearns substantially aided and abetted BSAM and its managers, Cioffi and Tannin, in their breach of fiduciary duties to Barclays. Indeed, Bear Stearns itself took actions and made decisions that caused harm to Barclays.

318. Bear Stearns knowingly provided its substantial assistance in the breach of the fiduciary duties owed to Barclays.

319. Bear Stearns' conduct, as alleged herein, was willful, malicious, reckless, and without regard to Barclays' rights and interests.

320. As a direct, proximate and foreseeable result of Bear Stearns' conduct, in aiding and abetting BSAM, Cioffi, and Tannin in the breach of their fiduciary duties owed to Barclays, Barclays has been damaged in an amount to be determined at trial. As a result of Bear Stearns' conduct, Barclays is also entitled to punitive damages in an amount to be determined at trial, as well as interest at the statutory rate.

#### NINTH CAUSE OF ACTION

(Civil Conspiracy to Breach Fiduciary Duties Owed to Barclays—as to Defendants BSAM, Cioffi, Tannin and Bear Stearns)

321. Barclays repeats and realleges the foregoing allegations as though fully set forth herein.

322. Defendants BSAM, Cioffi, Tannin, and Bear Stearns planned and agreed to abuse the “enhanced” structure for their own gain. These defendants knew and understood at the time of their agreement that Barclays would be injured by their wrongful conduct.

323. Defendants BSAM, Cioffi, Tannin, and Bear Stearns acting together, and with others at times, participated in a plan to sell assets underwritten by Bear Stearns or accumulated and

managed by BSAM to the Enhanced Fund, contrary to BSAM's representations to Barclays, for the purpose of unloading those assets in a manner that was financially beneficial to Bear Stearns or BSAM and in disregard of BSAM's, Cioffi's and Tannin's fiduciary duties to Barclays.

324. In furtherance of that conspiracy, Bear Stearns and/or BSAM caused Bear Stearns- and BSAM-affiliated assets that were excessively risky, troubled and/or overpriced to be purchased by the Enhanced Fund, including at a time when the Enhanced Fund was already faltering. Bear Stearns and/or BSAM assets sold into the Enhanced Fund were prohibited by the Investment Guidelines that BSAM had agreed with Barclays to follow.

325. Defendants BSAM, Cioffi, Tannin, and Bear Stearns also agreed to conceal the true nature and performance of the Enhanced Fund, to transfer certain assets to Everquest, and to attempt to proceed with the Everquest IPO as a way of enriching themselves, without regard to their duties and obligations to Barclays. In furtherance thereof, these defendants concealed the poor performance of the Enhanced Fund and eventually left the Enhanced Fund with an illiquid, impermissible and troubled investment in Everquest, to Barclays' detriment.

326. These defendants' conduct, as alleged herein, was willful, malicious, reckless, and without regard to Barclays' rights and interests.

327. As a direct, proximate and foreseeable result of these defendants' conduct, Barclays has been damaged in an amount to be determined at trial. As a result of defendants' conduct, Barclays is also entitled to punitive damages in an amount to be determined at trial, as well as interest at the statutory rate.

TENTH CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duties Owed to Barclays—as to Defendant Bear Stearns Companies)

328. Barclays repeats and realleges the foregoing allegations as though fully set forth herein.

329. As shown above, under the circumstances of this case, defendants BSAM, Cioffi and Tannin owed fiduciary duties specifically to Barclays.

330. In engaging in the conduct alleged herein, BSAM, Cioffi and Tannin repeatedly breached their fiduciary duties to Barclays.

331. Bear Stearns Companies knew that BSAM and its managers, Cioffi and Tannin, owed specific fiduciary duties to Barclays and understood Barclays' unique position in the structure.

332. In overseeing and directing the conduct of BSAM, especially in June 2007 and later, Bear Stearns Companies substantially aided and abetted BSAM and its managers, Cioffi and Tannin, in their breach of fiduciary duties to Barclays. Indeed, Bear Stearns Companies itself took actions and made decisions that caused harm to Barclays.

333. Bear Stearns Companies knowingly provided its substantial assistance in the breach of the fiduciary duties owed to Barclays.

334. Bear Stearns Companies' conduct, as alleged herein, was willful, malicious, reckless, and without regard to Barclays' rights and interests.

335. As a direct, proximate and foreseeable result of Bear Stearns Companies' conduct, in aiding and abetting BSAM, Cioffi, and Tannin in the breach of their fiduciary duties owed to Barclays, Barclays has been damaged in an amount to be determined at trial. As a result of Bear Stearns Companies' conduct, Barclays is also entitled to punitive damages in an amount to be determined at trial, as well as interest at the statutory rate.

ELEVENTH CAUSE OF ACTION

(Civil Conspiracy to Breach Fiduciary Duties Owed to Barclays—as to Defendants BSAM, Tannin, Cioffi and Bear Stearns Companies)

336. Barclays repeats and realleges the foregoing allegations as though fully set forth herein.

337. As described above, Bear Stearns Companies knew that BSAM and its managers, Cioffi and Tannin, owed fiduciary duties personal to Barclays, and conspired and agreed with those defendants to breach their duties.

338. In engaging in the conduct alleged herein, BSAM, Cioffi and Tannin repeatedly took overt actions in breach of their fiduciary duties to Barclays.

339. In overseeing and directing the conduct of BSAM, especially in June 2007 and later, Bear Stearns Companies knew that BSAM and its managers, Cioffi and Tannin, would be breaching their fiduciary duties to Barclays and would harm Barclays in the process, and Bear Stearns Companies directed and worked with those defendants to that end. Bear Stearns Companies pursued its own interests and goals, and acted contrary to Barclays' interests.

340. Bear Stearns Companies' conduct, as alleged herein, was willful, malicious, reckless, and without regard to Barclays' rights and interests.

341. As a direct, proximate and foreseeable result of Bear Stearns Companies' conduct, in conspiring with BSAM, Cioffi, and Tannin to sacrifice Barclays' stake in the structure and breach the fiduciary duties specifically owed to Barclays, Barclays has been damaged in an amount to be determined at trial. As a result of defendant's conduct, Barclays is also entitled to punitive damages in an amount to be determined at trial, as well as interest at the statutory rate.

PRAAYER FOR RELIEF

WHEREFORE, Barclays demands judgment and permanent relief against

Defendants as follows:

(a) awarding Barclays compensatory and punitive damages in amounts to be determined at trial, together with pre-judgment interest at the maximum rate allowable by law;

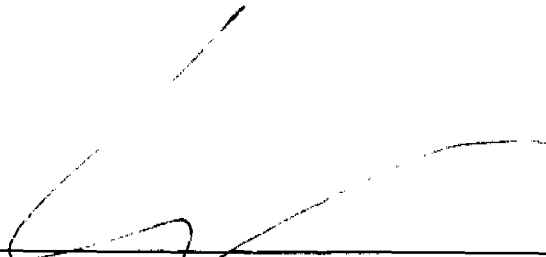
(b) awarding Barclays its reasonable costs and expenses incurred in this action, including, to the extent applicable, counsel fees; and

(c) awarding Barclays all such other relief as the Court deems just and proper.

JURY DEMAND

Barclays hereby demands a trial by jury.

Dated: December 19, 2007  
New York, New York



---

Lawrence Byrne  
James R. Warnot, Jr.  
Lance Croffoot-Suede  
Ruth E. Harlow  
Brenda D. DiLuigi  
LINKLATERS LLP  
1345 Avenue of the Americas  
New York, New York 10105  
(212) 903-9000 (phone)  
(212) 903-9100 (fax)

Attorneys for Plaintiff, Barclays Bank PLC