



Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com

Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Barclays Pays \$50M To Settle NY Forex Rigging Claims

By **John Kennedy**

Law360, New York (February 18, 2016, 10:59 AM ET) -- Barclays PLC has agreed to pay \$50 million to settle claims that it misused a system intended to block stale foreign exchange prices as a way to boost the bank's profits while hurting clients, according to court documents filed Wednesday in New York federal court.

Along with the cash payout, Barclays has also agreed to provide information that the plaintiff, Axiom Investment Advisors LLC, believes will help pursue similar claims against other banks that engaged in similar so-called "Last Look" practices.

Such practices involved putting holds on foreign exchange orders that lasted milliseconds but represented "an eternity in the FX market," and allowed the bank to determine if the price a customer sought to pay was outside a certain range. If that price was deemed unprofitable for Barclays, the bank would enter a worse price or cancel trades with little or no explanation, Axiom said.

Although Axiom acknowledged in its motion for preliminary approval of the deal that the British bank could withstand a larger settlement, it said that the benefit of its cooperation should offset that fact.

The settlement class includes anyone who was affected by these practices between June 1, 2008, and the date the settlement is preliminarily approved, as long as they lived in the U.S. or placed an order using BARX, the bank's electronic trading platform. Axiom has estimated the size of this class at less than 1,000 people.

Those who don't exclude themselves from the class will not be able to file subsequent lawsuits involving claims that could have been alleged in this case and arise from the factual basis of this action. However, the settlement carves out claims arising under foreign laws based on orders or trades using BARX via a Barclays server outside the U.S. and belonging to any entity outside the U.S., as well as claims brought by the plaintiffs in **the ongoing** In re: Foreign Exchange Benchmark Rates Antitrust Litigation.

Korein Tillery LLC and Scott & Scott LLP have moved to be named settlement class counsel.

Neither Barclays nor Axiom could be reached for comment Thursday.

Axiom's suit was **filed in late November**, less than two weeks after Barclays was hit with a **\$150 million fine** by the New York Department of Financial Services and was forced to fire its global head of electronic fixed income, currencies and commodities automated flow trading for misconduct using the Last Look system.

If not for the NYDFS fine, Axiom may have had a harder time making their case, Jeffrey Alberts, head of Pryor Cashman LLP's white collar defense and investigations practice, who isn't involved in the case, told Law360 Thursday.

Because the bank signed off on the department's consent order, which included factual allegations of wrongdoing involving the Last Look system, it opened itself up for subsequent lawsuits brought by private parties, Alberts said.

Having spent six years as a prosecutor with the U.S. Attorney's Office for the Southern District of New York, Alberts said he understands the government's desire for justice and the need to wrap up the case with an appropriate penalty and by getting a defendant to admit that what they did was wrong.

"But for the bank, that very often doesn't wrap things up," Alberts said.

Barclays was also party to a **broader \$5.6 billion settlement** with NYDFS and U.K. and U.S. law enforcement that also resulted in guilty pleas from the five settling banks.

Axiom has also sued Deutsche Bank AG over similar "Last Look" claims.

Axiom is represented by Christopher M. Burke, Walter W. Noss, Kristen M. Anderson, Kate Lv, and Thomas K. Boardman of Scott & Scott, George A. Zeles, Robert E. Litan, Randall P. Ewing Jr., Stephen M. Tillery, Robert L. King, Aaron M. Zigler and Michael E. Klenov of Korein Tillery, Michael D. Hausfeld, Reena A. Gambhir, Jeannie M. Keeney, Bonny E. Sweeney and Michael P. Lehmann of Hausfeld LLP, and Linda P. Nussbaum, Bart D. Cohen and Bradley J. Demuth of Nussbaum Law Group PC.

Counsel information for Barclays was unavailable Thursday.

The case is Axiom Investment Advisors LLC v. Barclays Bank PLC, et al., case number 1:15-cv-09323, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Benjamin Horney, Evan Weinberger, Jack Newsham and Ed Beeson. Editing by Rebecca Flanagan.
