



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

MARK E. VAN DER WEIDE  
GENERAL COUNSEL

July 6, 2018

Thomas C. Baxter, Jr., Esq.  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004

Dear Mr. Baxter:

This letter responds to your request for confirmation that Barclays Bank PLC (“Barclays”), a subsidiary of Barclays PLC, both of London, England, would no longer be deemed to control Barclays Africa Group Limited (“BAGL”), Johannesburg, South Africa, for purposes of the Bank Holding Company Act of 1956, as amended (“BHC Act”), in light of Barclays’ reduction of ownership of BAGL’s voting shares from 62.3 percent to 14.9 percent, the winding down and eventual termination of transitional services between Barclays and BAGL, and the limited ongoing business relationships between Barclays and BAGL.

Barclays is a foreign bank as defined under section 1(7) of the International Banking Act of 1978,<sup>1</sup> and a bank holding company under the BHC Act. In the United States, Barclays operates a network of branches and representative offices,<sup>2</sup> and the remainder of its U.S. operations are held under Barclays US LLC, New York, New York, Barclays’ U.S. intermediate holding company. Barclays US LLC controls, among other companies, Barclays Bank, Wilmington, Delaware, a state non-member bank, and Barclays Capital Inc., New York, New York, a broker-dealer. BAGL is a South African-based financial services provider that operates in 12 African countries. In 2005, Barclays acquired approximately 55 percent of the voting shares of Amalgamated Banks of South Africa (“ABSA”), a predecessor to BAGL, and in 2013,

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<sup>1</sup> 12 U.S.C. § 3101(7).

<sup>2</sup> Barclays operates branches in Miami, Florida and New York, New York, and representative offices in Newark and Wilmington, both of Delaware.

Barclays merged its other operations in Africa into ABSA, increasing Barclays' ownership to 62.3 percent of the voting shares of the combined organization.

In 2016, Barclays began a global strategy to focus its attention on its operations in the United Kingdom and the United States. As part of this strategy, in May 2016, Barclays sold 12.2 percent of its voting ownership in BAGL through a secondary offering, reducing its ownership from 62.3 percent to 50.1 percent. In December 2016, Barclays requested approval from the Minister of Finance in South Africa ("MOFSA") and the South Africa Reserve Bank ("SARB") for Barclays to reduce its ownership in BAGL to below 50.1 percent. MOFSA and SARB approved the sell-down with certain conditions, including that Barclays provide certain transitional services to BAGL to facilitate an orderly separation of the companies [REDACTED]

[REDACTED] Since receiving the conditional approval from the MOFSA and SARB, Barclays has reduced its voting ownership in BAGL from 50.1 percent to 14.9 percent through a series of transactions and has arranged for the gradual phase-out of transitional services provided to BAGL by Barclays by June 2020.

Barclays also has requested a determination from the U.K. Prudential Regulation Authority ("PRA") and the U.K. Financial Conduct Authority ("FCA") that Barclays no longer controls BAGL and may deconsolidate BAGL from Barclays for U.K. bank regulatory purposes ("Full Deconsolidation determination").<sup>3</sup>

Under a separation agreement between Barclays and BAGL, Barclays has the right to appoint one director representative to BAGL's 17-member board of directors following the Full Deconsolidation determination. The director representative would not serve as the chairman of the board or of any board committee.<sup>4</sup> In addition, Barclays would not have the right to representation on the boards of directors of any subsidiaries of BAGL. Barclays represents that there will be no employee interlocks between Barclays, on the one hand, and BAGL or its subsidiaries, on the other, upon the Full Deconsolidation determination.<sup>5</sup> In addition, Barclays' right to veto certain of

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<sup>3</sup> As an interim step to the Full Deconsolidation determination, and based on the limited current relationship between Barclays and BAGL, the PRA and the FCA have granted Barclays permission to proportionally consolidate BAGL's risk-weighted assets at 14.9 percent for U.K. bank regulatory purposes.

<sup>4</sup> Under the separation agreement, Barclays retains the right to one director representative for as long as it maintains at least 8 percent of the common shares of BAGL.

<sup>5</sup> A limited number of Barclays employees would be assigned to BAGL in order to provide the transitional services that Barclays would provide to BAGL under the separation agreement and related agreements.

BAGL's major policies and decisions, and BAGL's obligation to abide by Barclays' policies and other oversight for purposes of compliance with U.K. law, will each terminate upon the Full Deconsolidation determination.

Barclays represents that any business relationships between Barclays and BAGL following the Full Deconsolidation determination will be on market terms, non-exclusive, and terminable without penalty. Barclays represents that its existing business relationships with BAGL include, among other things, banking, asset management, corporate finance, and trading activities; are *de minimis* relative to the size of the operations of Barclays and BAGL; and account for less than [REDACTED] percent and less than [REDACTED] percent of Barclays' and BAGL's gross revenues, respectively, for the year ending December 31, 2017. As a result, any business relationships between Barclays and BAGL following the Full Deconsolidation determination would not appear to provide Barclays with the ability or incentive to exercise a controlling influence over BAGL.

Barclays and BAGL have entered into several agreements to facilitate the orderly separation of the two companies during the approximately three-year period following the Full Deconsolidation determination. To minimize disruption and ensure continuity of their respective business operations, Barclays and BAGL have agreed to provide each other with temporary transitional services that do not involve either party's core banking operations. These transitional services relate to, among other things, information technology, back office operations, transaction monitoring, risk modeling, software for trade technology, clearing execution services, and human resources. The MOFSA and SARB conditioned the approval of Barclays' request to reduce its ownership in BAGL below 50.1 percent on Barclays providing these transitional services to BAGL. The transitional services generally will terminate by June 2020, subject to BAGL's right to extend individual services for limited periods of time. Barclays represents that the transitional services were negotiated on an arms-length basis and are on market terms. Barclays is limited in the amount of fees it can charge BAGL for the services [REDACTED].

Further, Barclays has committed that it will not engage in any business relationships with BAGL such that (i) BAGL's gross revenues attributable to those business relationships would exceed 2 percent of BAGL's gross revenues on a consolidated basis, or (ii) Barclays' gross revenues attributable to those business relationships would exceed 1 percent of Barclays' gross revenues on a consolidated basis, in each case as calculated based on the rolling average of the prior four quarters.

Barclays and BAGL are subject to certain non-compete, non-solicitation, and indemnification provisions under the separation agreement. Under the non-compete and non-solicitation provisions, Barclays is restricted from competing with BAGL in certain business activities in 14 African countries [REDACTED].

[REDACTED] Further, Barclays has agreed to indemnify BAGL for certain losses that may arise from their historical relationship, subject to liability caps.<sup>7</sup>

BAGL currently uses certain intellectual property of Barclays, including trademarks, such as the Barclays eagle symbol and the “Barclays” name in its corporate name, as well as some internet domain names and social media profiles. Under an intellectual property agreement and trademark license agreement, BAGL has the right to continue to use certain intellectual property and trademarks for a limited period of time to allow for rebranding by BAGL.<sup>8</sup> In South Africa, where BAGL conducts approximately 80 percent of its operations, BAGL must discontinue most uses of these trademarks by June 2018, and must fully discontinue the use of these trademarks in connection with its business outside of South Africa by June 2020, subject to limited extension rights.<sup>9</sup>

Barclays has stated that it does not propose to control or exercise a controlling influence over BAGL. Accordingly, Barclays has provided commitments in connection with its request that are similar to those on which the Board previously has relied to ensure that an investor is not able to exercise a controlling influence over a bank or bank holding company.<sup>10</sup>

For purposes of the BHC Act, a company has control over another company if the first company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company; (ii) controls in any manner the election of a majority of

[REDACTED]

<sup>8</sup> BAGL would be able to use other Barclays intellectual property under the intellectual property agreement, including certain Barclays software applications.

[REDACTED]

<sup>10</sup> The commitments are set out in the appendix.

the directors of the other company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the other company.<sup>11</sup> In addition, the Board's Regulation Y sets forth a set of rebuttable presumptions of control.<sup>12</sup> The BHC Act and the Board's Regulation Y presume that any company that directly or indirectly owns, controls, or has the power to vote less than 5 percent of any class of voting securities of a bank or other company does not control the bank or other company.<sup>13</sup>

In determining whether a company has the power to exercise a controlling influence over another company, the Board typically has considered a number of factors, including the size and structure of the company's voting and total equity investment; the company's rights to director representation; any management, employee, or director interlocks between the companies; any covenants or other agreements that allow the first company to influence or restrict management decisions of the other company; the nature and scope of the business relationships between the companies; and other indicia of the ability or incentive to exercise a controlling influence.<sup>14</sup>

The Board previously has found that a company that controlled another company for a significant period of time may be able to exert a controlling influence over the company even after a substantial divestiture.<sup>15</sup> As a result, the Board has generally applied a stricter standard for determining non-control in divestiture cases than the standard applied when a company seeks to establish that a de novo investment in another company is non-controlling. Thus, in determining whether a reduction in ownership is effective to terminate an existing control relationship, the Board has placed significant weight on the size of any voting investment retained by the divesting company and the

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<sup>11</sup> 12 U.S.C. § 1841(a)(2); 12 CFR 225.2(e).

<sup>12</sup> See 12 CFR 225.31(d).

<sup>13</sup> 12 U.S.C. § 1841(a)(3); 12 CFR 225.31(e).

<sup>14</sup> See Policy Statement on equity investments in banks and bank holding companies (September 22, 2008), available at [www.federalreserve.gov/newsevents/press/bcreg/20080922c.htm](http://www.federalreserve.gov/newsevents/press/bcreg/20080922c.htm) ("Policy Statement").

<sup>15</sup> See, e.g., C.I.T. Financial Corporation, 65 Federal Reserve Bulletin 369 (1979); 65 Federal Reserve Bulletin 440; Letter from the Board to Anne R. Williams, Esq., Steptoe & Johnson, dated June 4, 1985.

ongoing relationships between the divesting company and the company being divested.<sup>16</sup> The Board has paid particular attention to the size and qualitative importance of the business relationships to each counterparty and whether the business relationships are on market terms, non-exclusive, and terminable without penalty by the company being divested.<sup>17</sup>

Barclays will own, control, or hold with power to vote less than 15 percent of the voting common shares of BAGL and will hold no other equity or debt instrument of BAGL. [REDACTED]

[REDACTED] Following the Full Deconsolidation determination, Barclays will have one director representative on the 17 member board of directors of BAGL, and Barclays will not have any other director or employee interlocks with BAGL or its subsidiaries. In addition, Barclays' right to veto certain of BAGL's major policies and decisions, and BAGL's obligation to abide by Barclays' policies and other oversight for purposes of compliance with U.K. law, will each terminate upon the Full Deconsolidation determination.

As measured against each party's gross revenues, the business relationships between Barclays and BAGL are and will remain quantitatively limited. The relationships also are qualitatively nonmaterial, as none of the relationships are core to either institution's operations. Further, the business relationships were entered into on an arms-length basis, are on market terms, and are terminable without penalty by either party. Barclays also has committed to restrict the scope of its business relationships with BAGL to *de minimis* levels from the perspective of both parties.

Barclays is restricted for several years from competing with BAGL in BAGL's current African markets [REDACTED]

[REDACTED] In the Policy Statement, the Board indicated a concern over non-compete agreements that allow one company to limit the activities of another company and that appear overly broad in geographic scope. In this case, the non-compete and non-solicitation provisions in the separation agreement limit Barclays in its ability to compete in certain African markets until [REDACTED] where

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<sup>16</sup> See supra note 15; see also Letter from Scott G. Alvarez, General Counsel of the Board, to Richard W. Decker, Jr., Belvedere Capital Partners II, LLC, dated April 5, 2010.

<sup>17</sup> See Letter from Scott G. Alvarez, General Counsel of the Board, to Rolando Mayans, Equity Bancshares, Inc., dated October 13, 2016; Letter from Scott G. Alvarez, General Counsel of the Board, to Luigi L. De Ghenghi, Esq., Davis Polk & Wardwell LLP, dated January 28, 2016.

BAGL operates but do not restrict BAGL from expanding geographically and thereby competing with Barclays in additional markets. Under these circumstances, it does not appear that Barclays would be able to exert a controlling influence over BAGL through these contractual provisions.

Although important to facilitating an orderly separation of Barclays and BAGL, the transitional services will be quantitatively limited in size and scope and do not relate to either party's core operations. These transitional services are temporary and will be, or have already been, replaced with internal resources or arrangements with other service providers. In addition, under the trademark agreement, Barclays cannot threaten BAGL's continuity of operations or cause BAGL to immediately incur significant rebranding costs. Moreover, the shared use of the Barclays eagle symbol and the "Barclays" name in BAGL's corporate name until June 2020 in countries other than South Africa is unlikely to cause undue confusion among BAGL's retail customers. These transitional relationships inure to the benefit of BAGL and not Barclays. Consequently, taken individually and as a whole, the business relationships and transitional services between Barclays and BAGL do not appear to provide Barclays with the ability to exercise a controlling influence over BAGL.

Barclays has represented that it does not intend to exert or attempt to exert a controlling influence over BAGL following the Full Deconsolidation determination, and it does not appear that Barclays entered into the various agreements with BAGL in order to exert a controlling influence over BAGL.



Based on all the facts of record in this case, and specifically conditioned on compliance with all the representations and commitments made in connection with your request, staff of the Legal Division and Division of Supervision and Regulation would not recommend that the Board find Barclays to control BAGL for purposes of the BHC Act following the Full Deconsolidation determination, in light of Barclays' reduced level of voting and total equity ownership to below 15 percent, the limited director representation, the continued winding down and eventual termination of the transition services and other relationships, and the limited continuing business relationships that will exist between Barclays and BAGL.

This opinion is based on all the facts of record, including all the representations and commitments made by or on behalf of Barclays, whether noted in this letter or otherwise contained in correspondence or discussions with the Board or the Federal Reserve Bank of New York. Any change in the terms or circumstances of the transaction may result in a different opinion and should be reported immediately to Board and Reserve Bank staff.

If you have any questions about this matter, please contact Mark Buresh, Senior Attorney (202-452-5270), or Brian Phillips, Attorney (202-452-3321) of the Board's Legal Division.

Sincerely,

A handwritten signature in blue ink that reads "Mark Van Der Weide". The signature is written in a cursive style with a large initial 'M' and a long, sweeping underline.



## Appendix

In connection with the request by Barclays PLC, London, England (together with its subsidiaries and affiliates, “Barclays”), for confirmation that staff of the Board of Governors of the Federal Reserve System (“Board”) would not recommend that the Board find Barclays to control Barclays Africa Group Limited (“BAGL”), Johannesburg, South Africa, for purposes of the Bank Holding Company Act of 1956, as amended (“BHC Act”), Barclays hereby commits that, following a determination from the U.K. Prudential Regulation Authority and the U.K. Financial Conduct Authority that Barclays no longer controls BAGL and may deconsolidate BAGL from Barclays for U.K. bank regulatory purposes, Barclays will not, without the prior approval of the Board or its staff, directly or indirectly:

1. Exercise or attempt to exercise a controlling influence over the management or policies of Barclays Africa Group Limited (“BAGL”), Johannesburg, South Africa, or any of its subsidiaries;
2. Have or seek to have more than one representative of Barclays serve on the board of directors of BAGL or any of its subsidiaries;
3. Permit any representative of Barclays who serves on the board of directors of BAGL or any of its subsidiaries to serve:
  - i. as the chairman of the board of directors of BAGL or any of its subsidiaries;
  - ii. as the chairman of any committee of the board of directors of BAGL or any of its subsidiaries;
  - iii. as a member of any committee of the board of directors of BAGL or any of its subsidiaries if the Barclays representative occupies more than 25 percent of the seats on the committee;
  - iv. as a member of any committee that has the authority or practical ability to unilaterally make (or block the making of) policy or other decisions that bind the board or management of BAGL or any of its subsidiaries;
4. Have or seek to have any employee or representative of Barclays serve as an officer, agent, or employee of BAGL or any of its subsidiaries except as provided in the Separation Agreement<sup>1</sup> or the TSA<sup>2</sup> and subject to any assignees of the Barclays Group to BAGL being expressly accountable to BAGL and under the sole supervision

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<sup>1</sup> “Separation Agreement” has the meaning ascribed to such term in the letter from Thomas C. Baxter, Jr. to Mark E. Van Der Weide, dated January 25, 2018.

<sup>2</sup> “TSA” has the meaning ascribed to such term in the letter from Thomas C. Baxter, Jr. to Mark E. Van Der Weide, dated January 25, 2018.

and direction of BAGL management (the final such assignment to conclude on February 28, 2021);

5. Take any action that would cause BAGL or any of its subsidiaries to become a subsidiary of Barclays;
6. Own, control, or hold with power to vote securities that (when aggregated with securities that the officers and directors of Barclays own, control, or hold with power to vote) represent 15 percent or more of any class of voting securities of BAGL or any of its subsidiaries;
7. Own or control equity interests that would result in the combined voting and nonvoting equity interests of Barclays and its officers and directors to equal or exceed 15 percent of the total equity capital of BAGL or any of its subsidiaries;
8. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of BAGL or any of its subsidiaries;
9. Enter into any agreement with BAGL or any of its subsidiaries that substantially limits the discretion of BAGL's management over major policies or decisions, including, but not limited to, policies or decisions about employing and compensating executive officers; engaging in new business lines; raising additional debt or equity capital; merging or consolidating with another firm; or acquiring, selling, leasing, transferring, or disposing of material assets, subsidiaries, or other entities;
10. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of BAGL or any of its subsidiaries;
11. Dispose or threaten to dispose (explicitly or implicitly) of equity interests of BAGL or any of its subsidiaries in any manner as a condition or inducement of specific action or non-action by BAGL or any of its subsidiaries; or
12. Engage in any business relationships with BAGL such that (i) BAGL's gross revenues attributable to those business relationships exceed 2 percent of BAGL's gross revenues, on a consolidated basis and (ii) Barclays' gross revenues attributable to those business relationships exceed 1 percent of Barclays' gross revenues, on a consolidated basis, in each case under (i) and (ii) as calculated based on the rolling average of the prior four quarters.

In addition, Barclays and each of its subsidiaries and affiliates commits to the following:

13. Barclays and each of its subsidiaries and affiliates agree to provide all information relating to Barclays' disposition of control of BAGL, without regard to whether such information is located within or without the United States, requested in connection with any investigation, action, or proceeding by the Board relating to:

- i. Enforcement or possible enforcement of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq. (“BHC Act”), or the Change in Bank Control Act of 1978, as amended, 12 U.S.C. § 1817(j) (“CIBC Act”); and
- ii. The ownership or control by the Barclays Group of equity interests in BAGL.

14. Barclays and each of its subsidiaries and affiliates consent and submit to the personal jurisdiction of any federal court of competent jurisdiction and of the Board for purposes of any investigation or possible investigation, action, subpoena, examination, or proceeding relating to the administration or enforcement of these commitments, or relating to Barclays’ disposition of control of BAGL pursuant to the BHC Act or the CIBC Act. For purposes of this commitment, Barclays and each of its subsidiaries and affiliates shall at all times maintain in the United States a designated agent, acceptable to the Board, to accept service on its behalf, including service of any process, notice, order, or subpoena. Barclays and each of its subsidiaries and affiliates designate Barclays Bank PLC, New York Branch, Attention: Office of the General Counsel, 745 Seventh Avenue, New York, NY 10019, as agent to accept such service, and will not change this designation without notice to and consent of the Board.

The terms used in these commitments have the same meanings as set forth in the BHC Act and the Board’s Regulation Y. For the avoidance of doubt, shares held by Barclays in a good faith fiduciary capacity without sole discretionary voting authority should not be included when calculating compliance with the thresholds in these commitments.

Barclays also commits that it will promptly provide an executed copy of these commitments to BAGL.

Barclays agrees that these commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions on Barclays’ above-referenced request and, as such, may be enforced in proceedings under applicable law.