



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

SCOTT G. ALVAREZ  
GENERAL COUNSEL

December 15, 2009

Andrew S. Baer, Esq.  
Sullivan & Cromwell LLP  
1701 Pennsylvania Avenue, N.W.  
Washington, DC 20006-5805

Dear Mr. Baer:

This responds to your request for confirmation that Barclays PLC (“Barclays”), London, United Kingdom, would not be deemed to control BlackRock, Inc. (“BlackRock”), New York, New York, or any of its subsidiaries, for purposes of the Bank Holding Company Act (“BHC Act”) as a result of Barclays’s equity investment in, and business relationships with, BlackRock.<sup>1</sup> Barclays is a foreign bank and a financial holding company for purposes of the BHC Act. BlackRock is an investment banking and asset management firm.<sup>2</sup>

Transaction Summary

BlackRock has acquired all the outstanding equity of Barclays Global Investors (“BGI”), San Francisco, California, from Barclays, in exchange for 37.8 million common and preferred shares of BlackRock and approximately \$6.6 billion in cash. BGI engages in investment advisory and asset management services. As a result of the transaction, Barclays owns approximately 4.9 percent of the voting shares, and 19.9 percent of the total equity, of BlackRock. The preferred shares that Barclays received are nonvoting shares that convert automatically into common stock, on a one-for-one basis, on sale to a third party. The shares cannot convert into voting shares in Barclays’ hands at any time.

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<sup>1</sup> Correspondence related to this request includes documents of June 8, June 16, June 24, September 4, and November 25, 2009, as well as other communications with Board staff in person, by telephone, and by electronic mail.

<sup>2</sup> BlackRock is a subsidiary of both The PNC Financial Services Group, Inc. (“PNC”), Pittsburgh, Pennsylvania, and Bank of American Corporation (“BAC”), Charlotte, North Carolina. PNC owns 32.5 percent of the voting shares, and approximately 23.8 percent of the total equity, of BlackRock. PNC may participate in a planned capital raise by BlackRock which could increase its ownership interest. Bank of America Corporation owns 3.4 percent of the voting shares, and approximately 34.1 percent of the total equity, of BlackRock.

However, if Barclays sold all of its common and preferred shares, it would ultimately control the disposition of 38.6 percent of the common stock of BlackRock.

As part of the transaction, Barclays has entered into a shareholder's agreement with BlackRock.<sup>3</sup> The shareholder agreement limits Barclays' ownership of BlackRock stock to a maximum of 4.9 percent of the voting power of all issued and outstanding voting stock, and 19.9 percent of BlackRock's total equity.

Under the shareholder's agreement, Barclays has the authority to nominate two of nineteen members of BlackRock's board of directors.<sup>4</sup> The agreement requires Barclays to vote all of its shares of BlackRock in accordance with the recommendations of BlackRock's board, although certain corporate actions of BlackRock would require the prior approval of Barclays.<sup>5</sup> The agreement provides certain pre-emptive, demand registration, and "piggyback" registration rights to Barclays. The shareholder's agreement generally prohibits Barclays from direct or indirect involvement in making or soliciting proposals that would cause it to exceed any part of its ownership cap or its allotted board representation, or for any type of transaction involving a merger, consolidation, restructuring or sale of BlackRock, or other significant corporate transaction concerning BlackRock.

Under the terms of the agreement, Barclays would not be able to sell or otherwise transfer any BlackRock stock to third parties for a period of one year from December 1, 2009, without the prior approval of BlackRock. For the one-year period beginning December 1, 2010, Barclays may transfer 50 percent of its shares without BlackRock's consent and the other 50 percent with such consent. In any case where Barclays is permitted to transfer its shares to a third party,<sup>6</sup> Barclays may only transfer BlackRock shares in: (a) certain private placement sales prior to the registration of the

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<sup>3</sup> The agreement expires on the later to occur of either (i) the fifth anniversary of the closing of the transaction or (ii) the time when Barclays' ownership interest in BlackRock's total equity drops below 5 percent of the outstanding capital stock.

<sup>4</sup> Barclay's representation on BlackRock's board may be reduced to one director if Barclays' ownership of BlackRock stock is below 10 percent for a period of more than 90 days, and reduced to no directors if its ownership of BlackRock stock is below 5 percent for such period.

<sup>5</sup> Such actions include: (i) any amendment, modification, repeal or waiver of BlackRock's certificate of incorporation or bylaws that would in any material respect adversely alter or change the powers or preferences of the shares of any class of BlackRock's stock held by Barclays; (ii) any settlement or consent in a regulatory enforcement matter that reasonably would be likely to have adverse consequences for Barclays; or (iii) any voluntary bankruptcy or similar filing by BlackRock.

<sup>6</sup> The shareholder agreement also permits Barclays to transfer shares to affiliates who agree to be bound by the terms of the shareholder's agreement. Since such affiliates would not be considered a third party, any nonvoting shares transferred to an affiliate would remain nonvoting in the affiliate's hands.

shares to persons who would not acquire more than 2 percent of BlackRock's voting stock in such sales; (b) transfers that do not result in any person acquiring more than 2 percent of BlackRock's voting stock and to which a majority of BlackRock's independent directors have consented in writing; (c) privately negotiated transactions pursuant to which (i) no person would acquire more than 2 percent of BlackRock's voting stock in such transfer, (ii) no person would (taking the transfer into account) own 5 percent or more of BlackRock's voting stock, and (iii) not more than 4.5 percent of BlackRock's capital stock would be sold in any quarter (which limit also must take into account other sales by Barclays in the same calendar quarter); or (d) in widespread public distributions, provided that in such widespread distribution (i) no more than 4.5 percent of BlackRock's capital stock (taking the transfer into account) is sold per calendar quarter in total across all types of sales, and (ii) Barclays does not knowingly sell more than 2 percent of BlackRock's voting stock to any person or any voting stock to any person who would, following the sale, own 5 percent or more of BlackRock's voting stock. In addition, Barclays is required to coordinate with BlackRock on any transfer involving more than 10 percent of BlackRock's voting stock (including the effects of the transfer). The shareholder's agreement grants BlackRock a right, substantially similar to a right of first refusal, to purchase any of its shares that Barclays proposes to sell through any such permissible transfer.<sup>7</sup>

Barclays has acquired a 51 percent participation in a 364-day, \$2 billion revolving bridge facility to BlackRock to finance its acquisition of BGI. The facility is not renewable and contains no prepayment penalties. In addition, Barclays engages in, and wishes to engage in the future, in other business relationships with both BGI and BlackRock. Such relationships include, but would not be limited to, securities underwriting, brokerage and trading, mergers and acquisitions advisory services, and investment management services in the United States, Europe and Asia. Barclays received approximately \$38 million in compensation for such services for the first three quarters of 2009, representing less than 1 percent of Barclay's projected total annual revenues for 2009. BlackRock and BGI received approximately \$108 million for their services to Barclays, representing less than 2 percent of BlackRock's projected total annual revenues for 2009. Barclays and Blackrock will limit all business transactions with each other to non-exclusive, arms-length transactions in the ordinary course of business that, in the aggregate, do not generate in excess of 2.5 percent of the consolidated annual gross revenues of either Barclays or BlackRock, calculated on a rolling average of the prior four quarters.

Barclays has stated that it does not propose to control or exercise a controlling influence over BlackRock and that its investment is a passive investment. Accordingly, Barclays has provided commitments substantially similar to those on which the Board has

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<sup>7</sup> The stockholder agreement provides that if Barclays agrees to sell or otherwise transfer any stock in BlackRock pursuant to a privately negotiated transaction, Barclays must inform BlackRock of the terms negotiated with the proposed purchaser (which must be a bona fide third party purchaser) and give BlackRock the right to purchase the shares that are proposed to be sold on the disclosed terms.

previously relied in determining that an investing bank holding company would not be able to exercise a controlling influence over a nonbanking organization for purposes of the BHC Act.

### Legal Framework

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 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>8</sup> The Board's Regulation Y also sets forth a set of rebuttable presumptions of control.<sup>9</sup>

As a result of the transaction, Barclays would be deemed to control BlackRock for purposes of the BHC Act only if the Board were to find that Barclays exercised a controlling influence over the management or policies of BlackRock. Barclays does not own, control, or hold with power to vote 25 percent or more of any class of voting securities of, or control the election of a majority of the directors of, BlackRock. In addition, Barclays does not trigger any of the rebuttable presumptions of control in Regulation Y with respect to BlackRock as a result of the transactions.

### Discussion and Analysis

The size and nature of the equity investment by Barclays in BlackRock, when combined with Barclays's representation on BlackRock's board of directors and its existing and proposed business relationships with BlackRock, raise the issue of whether Barclays would exercise a controlling influence over the management or policies of BlackRock.

*Director Representation.* In September 2008, the Board revised its policy statement regarding equity investments in banks, bank holding companies, and nonbanking firms.<sup>10</sup> In its revised statement, the Board noted that a minority investor generally should be able to have a single representative on the board of directors of a nonbanking organization without acquiring a controlling influence over that organization's management or policies. The Board also stated that a minority investor that has up to two representatives on the board of directors of a nonbanking organization would be unlikely, absent other indicia of control, to be able to exercise a controlling interest when (i) the investor's aggregate director representation is proportionate to its total interest in the organization but does not exceed 25 percent of the voting members of the board, and (ii) another shareholder is a bank holding company that controls the organization under the BHC Act.

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<sup>8</sup> 12 U.S.C. § 1841(a)(2); 12 CFR 225.2(e).

<sup>9</sup> See 12 CFR 225.31(d).

<sup>10</sup> 12 CFR 225.144 ("Policy Statement").

Barclays will have two representatives on BlackRock's board of directors, which would expand from 17 to 19 directors. Barclays' aggregate director representation is proportionate to the total interest in the organization and does not exceed 25 percent of the voting members of the Board. In addition, both PNC and BAC control BlackRock for purposes of the BHC Act and are bank holding companies. Accordingly, Barclay's proposed director representation conforms to the Policy Statement.

*Transfer and Conversion of Nonvoting Shares.* The Board's Policy Statement also states that nonvoting shares that are convertible into voting shares carry less influence when such shares may not be converted into voting shares in the hands of the investor and may only be transferred by the investor: (i) to an affiliate of the investor or to the nonbanking organization; (ii) in a widespread public distribution; (iii) in transfers in which no transferee (or group of associated transferees) would receive 2 percent or more of any class of voting securities of the nonbanking organization; or (iv) to a transferee that would control more than 50 percent of the voting securities of the nonbanking organization without any transfer from the investor.

The nonvoting convertible preferred shares that Barclays holds may not be converted in Barclay's hands. In addition, as noted above, the shareholder's agreement limits Barclay's ability to transfer those shares to third parties to methods that are consistent with the Policy Statement. Accordingly, the transfer restrictions effectively limit the influence over BlackRock that such shares might otherwise confer on Barclays.

The Board also noted in the Policy Statement that it would not expect that a minority investor would have a controlling influence over a nonbanking organization if the investor owns a combination of voting shares and nonvoting shares that, when aggregated, represent less than one-third of the total equity of the organization (and less than one-third of any class of voting securities, assuming conversion of all convertible nonvoting shares held by the investor) and does not allow the investor to own, hold, or vote 15 percent or more of any class of voting securities of the organization.

In this case, Barclays owns, holds, or has the power to vote less than 15 percent of BlackRock's only class of voting securities, and owns less than one-third of the total equity of the organization. However, Barclays would receive nonvoting shares that, upon sale and conversion, could represent as much as 38.6 percent of BlackRock's currently outstanding common stock. To address this issue, Barclays has committed that it will not sell or transfer any shares of BlackRock stock to an unaffiliated third party if, as a result of the transfer, Barclays would have transferred ownership or control of an aggregate of 33.3 percent or more of BlackRock voting stock.<sup>11</sup> The numerator for calculating the aggregate percentage reflects all shares that Barclays currently owns or controls, or that it may in the future own or control, as well as all shares of nonvoting stock that it may

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<sup>11</sup> Any shares in excess of 33.3 percent that Barclays may not transfer as a result of this commitment will be held by Barclays without the possibility of transfer and will remain nonvoting in Barclays' hands.

propose to transfer, and the denominator incorporates all of BlackRock's outstanding common stock as well as all nonvoting convertible preferred stock held by Barclays at the time of the proposed transfer. The commitment itself prohibits Barclays from violating the Policy Statement and prevents Barclays from being able to transfer shares in excess of this percentage. Because the preferred shares held by Barclays convert automatically on transfer, any sale by Barclays would increase the denominator, preventing it from diluting its ownership in a manner that would circumvent the Policy Statement.

*Business Transactions.* Barclays is engaged in various business relationships with BlackRock, including a 51 percent participation interest in a 364-day, \$2 billion revolving bridge facility for BlackRock's acquisition of BGI. The facility is not renewable and contains no prepayment penalties. In addition, Barclays engages, and wishes to engage in the future, in business relationships with both BGI and BlackRock subsequent to the consummation of the transaction. Such relationships include, but would not be limited to, securities underwriting, brokerage and trading, mergers and acquisitions advisory services, and investment management services in the United States, Europe and Asia.

The Board typically has been concerned that a bank holding company has acquired control of a nonbanking organization for BHC Act purposes if the company has invested in the organization and has significant business relationships with the organization.<sup>12</sup> To address this concern, Barclays has agreed to limit the amount of business relationships with BlackRock and has committed that all such transactions will be non-exclusive, arms-length transactions in the ordinary course of business. Under the commitments, the aggregate amount of gross revenues that Barclays and BlackRock, each on a consolidated basis, respectively earns from such business transactions will not exceed 2.5 percent of their respective consolidated gross revenue, calculated on a rolling basis over the prior four quarters. The commitment accounts for the current level of business transactions being conducted by Barclays and BlackRock with each other and limits the extent that Barclays or BlackRock can influence the other through future business dealings.

Other mitigating factors further constrain the ability of Barclays to exercise a controlling influence over the management and policies of BlackRock and support a characterization of Barclay's proposed relationship with BlackRock as noncontrolling. In particular, Barclays owns less than 5 percent of the outstanding voting shares of BlackRock, and PNC and BAC have significantly larger equity ownership interests and are deemed to control BlackRock for purposes of the BHC Act.

Based on all the facts of record in this case, staff would not at this time recommend that the Board find that Barclays exercises a controlling influence over the management or policies of BlackRock for purposes of the BHC Act. In reaching this

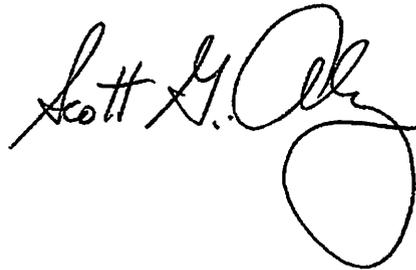
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<sup>12</sup> See, e.g., letter dated February 6, 2003, from Robert deV. Frierson, Deputy Secretary of the Board, to H. Rodgin Cohen; letter dated April 30, 1986, from James McAfee, Associate Secretary of the Board, to Thomas M. Shoaff.

determination, staff relied on all the facts of record, including all the representations and commitments made by or on behalf of Barclays and BlackRock (whether noted in this letter or otherwise contained in your correspondence with the Board). Any change in the terms or circumstances of the transaction may result in a different decision. In this regard, you should advise staff immediately of any material changes in the facts noted above.

To address the possibility of a controlling influence developing in the future, the Board retains the authority to review the investment and relationships regularly to determine whether, under all the facts and circumstances, Barclays is acting in a manner that suggests it has a controlling influence over BlackRock for purposes of the BHC Act. If you have any questions about this matter, please contact Brian P. Knestout, Attorney (202-452-2249), or Pat Robinson, Assistant General Counsel (202-452-3005), of the Board's Legal Division.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott G. Alley". The signature is written in a cursive style with a large, prominent loop at the end.

APPENDIX

Barclays and its subsidiaries and affiliates (collectively, the “Barclays Group”), 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 BlackRock or any of its subsidiaries;
2. Have or seek to have more than two representatives of the Barclays Group serve on the board of directors of BlackRock or any of its subsidiaries;
3. Permit any representative of the Barclays Group who serves on the board of directors of BlackRock or any of its subsidiaries to serve (i) as the chairman of the board of directors of BlackRock or any of its subsidiaries, (ii) as the chairman of any committee of the board of directors of BlackRock or any of its subsidiaries, or (iii) serve as a member of any committee of the board of directors of BlackRock or any of its subsidiaries if Barclays Group representatives occupy more than 25 percent of the seats on the committee;
4. Have or seek to have any employee or representative of the Barclays Group serve as an officer, agent, or employee of BlackRock or any of its subsidiaries;
5. Take any action that would cause BlackRock 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 the Barclays Group own, control, or hold with power to vote) represent 25 percent or more of any class of voting securities of BlackRock or any of its subsidiaries;
7. Own or control equity interests that would result in the combined voting and nonvoting equity interests of the Barclays Group and its officers and directors to equal or exceed 25 percent of the total equity capital of BlackRock or any of its subsidiaries in the event that the Barclays Group were to own, hold, or have the power to vote 15 percent or more of the outstanding shares of any class of voting securities of BlackRock.
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 BlackRock or any of its subsidiaries;
9. Enter into any agreement with BlackRock or any of its subsidiaries that substantially limits the discretion of BlackRock’s management over major policies and 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 BlackRock or any of its subsidiaries;
11. Dispose or threaten to dispose (explicitly or implicitly) of equity interests of BlackRock or any of its subsidiaries in any manner as a condition or inducement of specific action or non-action by BlackRock or any of its subsidiaries; or
12. After the closing date of the Transaction,<sup>13</sup> sell or transfer any shares of capital stock of BlackRock to an unaffiliated third party if, as a result of the transfer, Barclays would have transferred in the aggregate, since the closing date of the Transaction, ownership or control of 33.3 percent or more of BlackRock's voting stock. The above percentage shall be calculated using the following formula:
  - (i) The numerator, which will be the total number of shares of BlackRock stock (common and convertible preferred) owned or controlled by Barclays as of immediately prior to the closing of the Transaction, acquired by Barclays in the Transaction or subsequently acquired or controlled by Barclays, that Barclays has at or following the closing sold or transferred to unaffiliated third parties, plus the number of such shares that Barclays proposes to sell or transfer,<sup>14</sup>  
divided by:
  - (ii) the denominator, which will be the total number of shares of BlackRock common stock outstanding at the time of the proposed transfer plus the number of shares of BlackRock convertible preferred stock owned or controlled by Barclays at the time of the proposed transfer.

This commitment applies only to shares of BlackRock that Barclays is deemed to own or control for purposes of the Bank Holding Company Act of 1956, as amended.

13. Enter into any other banking or nonbanking transactions with BlackRock or any of its subsidiaries, except for transactions in the ordinary course of business that are non-exclusive (except to the extent any individual transaction may contain an exclusivity provision limited to that transaction) and are on terms and under circumstances that in good faith would be offered to, or would apply to, companies that are not affiliated with Barclays or BlackRock, including, but not limited to, securities underwriting, brokerage and trading, mergers and acquisitions advisory services and investment management services, provided that the aggregate balance of all deposit accounts held by Barclays at BlackRock and its subsidiaries does not exceed 1 percent of the total deposits held at BlackRock and its subsidiaries and that

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<sup>13</sup> For purposes of these commitments, the "Transaction" is the sale by Barclays of its Barclays Global Investors asset management business to BlackRock, which is expected to close on December 1, 2009.

<sup>14</sup> The share figures used in the numerator will be adjusted for any stock splits, reverse stock splits, or other similar transactions occurring after the closing date of the Transaction.

the aggregate amount of (i) gross revenues Barclays, on a consolidated basis, earns from BlackRock and its subsidiaries from its business transactions with them does not exceed 2.5 percent of Barclays' annual gross revenues, on a consolidated basis, and (ii) gross revenues BlackRock, on a consolidated basis, earns from the Barclays Group from its business transactions with it does not exceed 2.5 percent of BlackRock's annual 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, as adjusted for the Transaction.

Barclays will use BlackRock's public filings to determine BlackRock's gross revenues on a rolling four-quarter basis. Barclays will use all information available to Barclays to monitor the amount of BlackRock's revenues earned from Barclays (as described in (ii) above), and will take all steps as are necessary and within its power to keep those revenues from exceeding the 2.5 percent cap.

For purposes of this commitment, "revenue" means all monies Barclays or BlackRock receive directly from the other in exchange for their respective products or services and that are accounted for by the recipient as revenue under applicable accounting standards.

The terms used in these commitments have the same meanings as set forth in the Bank Holding Company Act of 1956, as amended ("BHC Act"), and the Board's Regulation Y.

Barclays understands that these commitments constitute conditions imposed in writing in connection with the Board's determination that as a result of the Transaction Barclays will not control BlackRock for purposes of the BHC Act and Regulation Y, and as such, may be enforced in proceedings under applicable law.