



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

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ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

JUL 2 2009

Andrew S. Baer, Esq.
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1701 Pennsylvania Avenue, NW
Washington, D.C. 20006-5805

Dear Mr. Baer:

This letter concerns the notice filed December 2, 2008, under section 4 of the Bank Holding Company Act (“BHC Act”)¹ by Barclays PLC (“Barclays”), London, England, to commence the following actions: (1) expand the scope of previously approved physical commodities trading activities (“Physical Commodity Trading”); (2) measure compliance with the quantitative limits on its Physical Commodity Trading at the parent company level (“Barclays level”) rather than at the level of Barclays’ subsidiary, Barclays Bank PLC (“Barclays Bank”), London; (3) enter into physically settled tolling agreements with power plant owners (“Energy Tolling”); and (4) provide energy management services to power plant owners (“Energy Management Services”), all in the United States.

Barclays is a foreign bank organized under the laws of the United Kingdom that is treated as a financial holding company (“FHC”) for purposes of the BHC Act. Barclays conducts all its commodities derivatives activities, including the financial activities of engaging as principal in commodity derivatives transactions (“Commodity Derivative Activities”) and providing financial and investment advisory services for derivatives transactions (“Derivative Advisory Services”), through Barclays Bank. Barclays Bank previously obtained the Board’s approval to engage in Physical Commodity Trading as an activity that is complementary to Commodity Derivative Activities.² Barclays, on behalf of itself and Barclays Bank, has requested as follows:

¹ 12 U.S.C. § 1843.

² Barclays Bank PLC, 90 Federal Reserve Bulletin 279 (2004) (“Barclays Bank Approval”).

1. Relief from a commitment made in connection with the Barclays Bank Approval in order to expand the commodities in which Barclays may conduct physical trades to include propylene;
2. Relief from a commitment made in connection with the Barclays Bank Approval in order to allow Barclays, on a limited basis, to engage a third party to alter or refine a commodity;
3. Confirmation that Barclays' proposed long-term electricity supply contracts are consistent with its Physical Commodity Trading authority;
4. Relief from a commitment made in connection with the Barclays Bank Approval that would allow Barclays to measure compliance with the quantitative limits on its Physical Commodity Trading at the Barclays level rather than at the Barclays Bank level;
5. Authority to engage in Energy Tolling, on a limited basis, as an activity that is complementary to Commodity Derivative Activities; and
6. Authority to engage in Energy Management Services, on a limited basis, as an activity that is complementary to both Commodity Derivative Activities and Derivative Advisory Services.

Physical Commodity Trading

New Commodities. The Board conditioned the Barclays Bank Approval on a commitment by Barclays Bank ("Approved Commodities Commitment") to engage in physical trading only in commodities for which derivative contracts have been approved for trading on a futures exchange by the Commodity Futures Trading Commission (unless specifically excluded by the Board) or have been specifically approved by the Board ("Approved Commodities"). Since the Barclays Bank Approval, the Board has authorized certain commodities if an FHC can demonstrate that (1) there is a market in financially settled contracts on the commodity in addition to physically settled contracts; (2) the commodity is fungible; and (3) the market for the commodity is sufficiently liquid.³ In addition, an FHC must demonstrate that it has trading limits

³ See The Royal Bank of Scotland Group plc, 94 Federal Reserve Bulletin C60 (2008)("RBS Order").

in place that address both concentration risk and overall exposure to the commodity to ensure that it can physically trade the commodity without incurring significant additional risk.

Barclays has requested relief from the Approved Commodities Commitment in order to trade in propylene (“Proposed Commodity”). In the RBS Order, the Board determined that propylene meets the market, fungibility, and liquidity tests noted above. Barclays has represented that, as part of its risk-management program relating to the Proposed Commodity, it will impose appropriate concentration limits and overall exposure limits.

Altering Commodities. As noted, the Barclays Bank Approval permits Barclays Bank to trade only in Approved Commodities. As part of the approval, Barclays Bank committed that it will not process, refine, or otherwise alter a commodity (individually or collectively, “alter” or “altering a commodity”). Barclays has requested relief from this commitment so that it may engage a third party to alter commodities. The Board previously has granted authority to FHCs to alter commodities, subject to certain commitments.⁴ Barclays has made the same commitments relating to altering a commodity that the Board has relied on from other FHCs. In particular, Barclays has committed that it:

1. Will not process, refine, or otherwise alter a physical commodity itself;
2. Will not contract for the exclusive right to use a facility to alter commodities for any period of time; and
3. Will contract with third parties (i) to alter only Approved Commodities and (ii) to alter commodities only into other Approved Commodities.

Long-Term Electricity Supply Contracts. As part of its energy trading business, Barclays proposes to enter into long-term electricity supply contracts with large commercial and industrial end-users. Barclays’ current Physical Commodity Trading authority permits Barclays to take a position in a commodity and does not limit the duration of, or counterparties to, its contracts. Most commodities that Barclays is permitted to trade under the Physical Commodity Trading authority, however, tend by their nature to be limited to the wholesale

⁴ See RBS Order and Board letter to John Shrewsberry, Wells Fargo & Company, April 10, 2008.

market. Electricity, on the other hand, has a greater potential to be sold not only to end-users generally but also to small retail customers who are unlikely to be participants in the market for energy-related derivatives products. Barclays requests confirmation that entering into long-term electricity supply contracts with large commercial and industrial end-users is consistent with its Physical Commodity Trading authority.

To ensure that Barclays' activities remain complementary to the activities permitted under the Physical Commodity Trading authority, and consistent with previous approvals,⁵ Barclays has committed that it will enter into long-term electricity supply contracts only with commercial and industrial customers that consume electricity at a rate of at least (1) 800 megawatt-hours per year or (2) the minimum consumption level for commercial and industrial customers under applicable state law, whichever is greater. Requiring that Barclays contract only with customers that consume electricity at these high levels should help ensure that Barclays transacts with financially sophisticated purchasers (and not with retail purchasers) and, thus, remains essentially a wholesale intermediary.

Compliance at the Barclays Level. As part of the Barclays Bank Approval, Barclays Bank committed that the market value of the physical commodities it holds as a result of Physical Commodity Trading will not exceed 5 percent of the Bank's consolidated tier 1 capital, as calculated under its home country standard. Barclays Bank also agreed to notify the Federal Reserve Bank of New York if the market value of those physical commodities exceeds 4 percent of Barclays Bank's tier 1 capital. Other FHCs that have been granted Physical Commodity Trading authority have made this commitment based on the tier 1 capital of the parent holding company rather than that of the subsidiary bank. In light of the basis used by other FHCs, Barclays and Barclays Bank have requested approval to modify the Bank's commitments to allow the market-value cap to be calculated based on the tier 1 capital of Barclays rather than that of Barclays Bank.

Energy Tolling

As noted, Barclays has requested approval to expand its current activities to include Energy Tolling. Under the energy tolling agreements for the expanded activities, Barclays would make periodic fixed payments to the owner of a power generation facility ("capacity payments") in exchange for the right to all or

⁵ See RBS Order.

part of the plant's power output. Barclays also generally would supply fuel and make payments to cover the owner's variable costs plus a profit margin. The plant owner, however, would retain control over the day-to-day operations of the plant and physical plant assets at all times.⁶

Barclays has committed to conduct Energy Tolling activities in accordance with the restrictions, definitions, and conditions previously relied on by the Board in authorizing those activities. As noted, Barclays has also committed to the Board that it will limit the aggregate market value of physical commodities that it and any of its subsidiaries hold at any one time to 5 percent of Barclays' tier 1 capital. In addition, Barclays has committed to include the present value of capacity payments associated with Energy Tolling contracts in applying the 5 percent limit. As a result, Barclays' potential exposure to commodity-price risk would not increase by engaging in Energy Tolling activities.

Energy Management Services

As noted, Barclays has requested approval to provide Energy Management Services pursuant to an energy management agreement with a plant owner as an activity that is complementary to its Commodity Derivative Activities and Derivative Advisory Services. As an energy manager, Barclays proposes to provide transactional and advisory services to power plant owners. The transactional services would consist primarily of acting as a financial intermediary, thereby substituting its credit and liquidity for the owner's to facilitate the owner's purchase of fuel and sale of power. Barclays' advisory services also would include providing market information to assist the owner in developing and refining a risk-management plan for the plant and providing a variety of administrative services to support these transactions.

Barclays has committed to provide Energy Management Services in accordance with the restrictions, definitions, and conditions previously relied on by the Board in authorizing those activities. Barclays has also made all the commitments made by other FHCs in connection with the Board's previous approvals of Energy Management Services. Those commitments generally limit the scope of the activities that Barclays may perform as an energy manager to ensure that it incurs only those risks that are consistent with the agency nature of the Energy Management Services and to limit the revenues attributable to its

⁶ [The footnote has been redacted.]

Energy Management Services to 5 percent of Barclays' total consolidated operating revenues.⁷ The authority to act as an energy manager does not expand Barclays' ability to engage in physical commodity trading beyond what is currently permitted under its Physical Commodity Trading authority.

As noted, the Board previously has determined pursuant to Regulation Y that Physical Commodity Trading (including the activities in Barclays' request), Energy Tolling, and Energy Management Services are activities that are complementary to the financial activities of Commodity Derivative Activities or Derivative Advisory Services.⁸ The Board has delegated by regulation⁹ its authority to grant or deny requests for modifying a commitment or condition relied on by the Board in taking any action under the BHC Act to the Director of the Division of Banking Supervision and Regulation ("Director"). The Board also has delegated to the Director, with the concurrence of the General Counsel, authority to approve proposals by an FHC to engage in Energy Tolling and Energy Management Services if the proposal meets the conditions relied on by the Board in approving previous proposals and raises no significant legal, policy, or supervisory issues.

Barclays has made the same commitments with respect to the expansion of the scope of its Physical Commodity Trading that have been relied on by the Board in approving proposals by other FHCs to conduct the same activities. Barclays also has committed to conduct Energy Tolling and provide Energy Management Services in accordance with the restrictions, definitions, and conditions previously relied on by the Board in authorizing those activities. In addition, Barclays has established and continued to maintain policies and systems for monitoring and controlling the risks associated with Physical Commodity Trading, Energy Tolling, and Energy Management Services and is expected to continue to maintain effective risk-management policies and systems for each of those activities. Approval of the request to engage in Energy Tolling and Energy Management Services likely would benefit Barclays' customers by enhancing Barclays' ability to efficiently provide a full range of commodity-related services consistent with existing market practice. Approval also would enable Barclays to

⁷ "Total operating revenues" is defined as net interest income and all non-interest revenue, including net securities gains but excluding extraordinary items.

⁸ See RBS Order and Fortis S.A./N.V., 94 Federal Reserve Bulletin C20 (2008).

⁹ 12 CFR 265.7.

improve its understanding of physical-commodity and commodity-derivatives markets and its ability to serve as an effective competitor in those markets.

Based on the record, the Director, acting pursuant to authority delegated by the Board, and after consulting with the General Counsel, grants relief from existing commitments to permit Barclays (1) to engage in physical trades in propylene; (2) ,on a limited basis, to engage a third party to alter or refine a commodity; and (3) to measure compliance with the quantitative limit on its Physical Commodity Trading at the Barclays level. The Director also confirms that Barclays' proposal to enter into long-term electricity supply contracts is consistent with its Physical Commodity Trading authority.

In addition, the Director, with the concurrence of the General Counsel, has determined that (1) the proposed Energy Tolling is complementary to Barclays' Commodity Derivative Activities and (2) the proposed Energy Management Services are complementary to Barclays' Commodity Derivative Activities and Derivative Advisory Services. In approving the proposed Energy Tolling and Energy Management Services, the Director, with the concurrence of the General Counsel, also has determined that the proposed activities do not pose a substantial risk to the safety or soundness of Barclays, its depository institutions, or the financial system generally and can reasonably be expected to produce benefits to the public that outweigh any potential adverse effects.

In making these determinations, the Director relied on all the information, representations, and commitments provided by Barclays to the Board in connection with the notice.¹⁰ These commitments and conditions are integral to the determination that Physical Commodity Trading, Energy Tolling, and Energy Management Services would not pose a substantial risk to the safety and soundness of Barclays, other financial institutions, or the financial system generally. These determinations also are subject to all the conditions set forth in Regulation Y, including those in section 225.7,¹¹ and to the conditions contained in the Board's previous decisions noted above. These commitments and conditions shall be deemed to be conditions imposed in writing by the Board in connection with the notice and this approval and, as such, may be enforced in proceedings under applicable law. These determinations should not be construed as granting relief from any other conditions or commitments to which Barclays may be subject. In

¹⁰ See appendix for a complete list of the commitments Barclays has made in connection with these proposals.

¹¹ 12 CFR 225.7.

addition, these determinations are subject to the Board's authority to require modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder.

Very truly yours,


(signed) Robert deV. Frierson

Robert deV. Frierson
Deputy Secretary of the Board

Attachment

cc: Ivan J. Hurwitz, Vice President
Federal Reserve Bank of New York

Appendix

Commitments

1. Barclays PLC (“Barclays”) commits to the Board of Governors of the Federal Reserve System (“Board”) that Barclays will include the present value of all capacity payments to be made by Barclays in connection with the energy tolling agreements in calculating its compliance with the limit of 5 percent of tier 1 capital on the aggregate market value of the physical commodities that it and any of its subsidiaries hold at any one time as a result of Physical Commodity Trading;
2. Barclays commits to the Board that it will enter into long-term electricity supply contracts only with large commercial and industrial end-users that consume electricity at a rate of at least (i) 800 megawatt-hours per year or (ii) the minimum consumption level for large commercial and industrial customers under applicable state law, whichever is greater;
3. Barclays commits to the Board that it will contract with a third party for any services it needs in connection with the handling of any commodity; ensure that any alteration of commodities will be carried out by third parties on Barclays’ behalf; and ensure that both the commodities input and the resulting altered commodities will be Approved Commodities;
4. Barclays commits to the Board that it will ensure that revenues attributable to Barclays’ Energy Management Services in the United States will not exceed 5 percent of Barclays’ total consolidated operating revenues; and
5. Barclays commits to the Board that it will only act as an energy manager in the United States if the energy management agreement under which Barclays performs Energy Management Services provides that:
 - a. The owner of the facility retains the right to market and sell power directly to third parties, which may be subject to the energy manager’s right of first refusal;
 - b. The owner of the facility retains the right to determine the level at which the facility will operate (i.e., to dictate the power output of the facility at any given time);
 - c. Neither the energy manager nor its affiliates guarantee the financial performance of the facility; and
 - d. Neither the energy manager nor its affiliates bear any risk of loss if the facility is not profitable.