

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Relief from the requirement in section 75(1)(a) of the *Securities Act* (Alberta) and its equivalent in the *Securities Act* (British Columbia) to register as a dealer, in respect of trades in exchange contracts to clients in Alberta and British Columbia who are "qualified parties" as defined in Alberta Securities Commission Blanket Order 91-507 *Over-the-Counter Trades in Derivatives* and in British Columbia Securities Commission BC Instrument 91-507 *Over-the-Counter Trades in Derivatives*, respectively.

## Applicable Legislative Provision

*Securities Act* (Alberta), RSA 2000, c. S-4, sections 75(1)(a) and 144(1)

**Citation: Re BARCLAYS BANK PLC, 2022 ABASC 58**

**Date: 20220527**

In the Matter of  
the Securities Legislation of Alberta  
(the **Jurisdiction**)

and

In the Matter of the Process  
for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Barclays Bank PLC (**BB PLC**)  
and Barclays Capital Inc. (**BCI**)  
(the **Filers**)

## Decision

## Background

1. The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for an order under section 144(1) of the *Securities Act* (Alberta) (the **Act**) exempting the Filers from the dealer registration requirement of section 75(1)(a) of the Act (the **Exemption Sought**) in respect of trades in exchange contracts to clients in Alberta or British Columbia who are **Qualified Parties** as defined in Alberta Securities Commission Blanket Order 91-507 *Over-the-Counter Trades in Derivatives* or in British Columbia Securities Commission BC Instrument 91-501 *Over-the-Counter Derivatives*, respectively.
2. Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):
  - (a) the Alberta Securities Commission (the **Commission**) is the principal regulator for this application; and

- (b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in British Columbia.

### **Interpretation**

- 3. Terms defined in National Instrument 14-101 *Definitions* or in the Act have the same meaning in this decision, unless otherwise defined herein.

### **Representations**

- 4. This decision is based on the following representations made by the Filers to the Commission:

- (a) BB PLC is:

- (i) a public limited company registered in England and Wales having its head office located in London, England;
- (ii) a wholly-owned subsidiary of Barclays PLC;
- (iii) authorized as a bank in the United Kingdom (**UK**) by the Prudential Regulation Authority and regulated by the Financial Conduct Authority (the **FCA**) (together, the **UK Regulatory Authorities**);
- (iv) approved by the United States (**US**) National Futures Association (**NFA**) as an exempt foreign firm;
- (v) a clearing member of EUREX AG, Euronext and other exchanges; and
- (vi) relying on the international dealer exemption in section 8.18 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) in Alberta, British Columbia, Ontario and Québec.

- (b) BCI is:

- (i) incorporated under the laws of the State of Connecticut in the US having its head office located in New York, New York;
- (ii) an indirect wholly-owned subsidiary of BB PLC;
- (iii) a broker-dealer registered with the US Securities and Exchange Commission (**SEC**);
- (iv) a member of the Financial Industry Regulatory Authority (**FINRA**);
- (v) registered as a futures commission merchant (**FCM**) with the US Commodity Futures Trading Commission (**CFTC**) and a member of the NFA;

- (vi) a clearing member of the Chicago Board of Trade, Chicago Mercantile Exchange, the New York Mercantile Exchange and other exchanges; and
  - (vii) relying on the international dealer exemption in section 8.18 of NI 31-103 and the international adviser exemption in section 8.26 of NI 31-103 in Alberta, British Columbia, Manitoba, New Brunswick, Ontario, Québec and Saskatchewan.
- (c) Neither BB PLC nor BCI is registered under the securities legislation of any jurisdiction in Canada.
  - (d) Subject to obtaining the Exemption Sought, the Filers are not in default of securities legislation of any jurisdiction in Canada.
  - (e) The Filers propose to trade in exchange contracts to clients in Alberta and British Columbia only if the clients are Qualified Parties.
  - (f) The Filers will not advertise their services by television, radio, newspaper, internet or other media of general circulation originating in Canada, other than financial-industry publications.
  - (g) The Filers will not maintain an office, sales force or place of business in Canada.
  - (h) The Filers shall file with the Executive Director of the Commission any information the Executive Director may require in a form that is acceptable to the Executive Director.
  - (i) Exchange contracts will be traded by the Filers on behalf of Qualified Parties only on exchanges located outside Canada (each a **Non-Canadian Exchange**).
  - (j) For exchange contracts cleared at a clearing house under the jurisdiction of the SEC, BCI is required to adhere to regulations relating to an SEC registered broker-dealer and a FINRA member, which, among other things, require the segregation and separate accounting of customer positions and money to protect customers in the event of the insolvency or financial instability of a broker-dealer. This protection will extend to Alberta and British Columbia clients of BCI unless the SEC permits commingling, in which event BCI will nonetheless segregate such exchange contracts in a manner consistent with that contemplated by CFTC regulations relating to a CFTC-registered futures commission merchant (**FCM**). Similarly, for exchange contracts under the jurisdiction of the CFTC, BCI is required to adhere to regulations relating to a CFTC-registered FCM and an NFA member which, among other things, require the segregation and separate accounting of customer positions and money to protect customers in the event of the insolvency or financial instability of an FCM. This protection will extend to Alberta and British Columbia clients of BCI.
  - (k) BB PLC is bound by applicable FCA rules, including client asset rules which require BB PLC to arrange adequate protection for client assets for which BB PLC

is responsible and rules respecting the proper accounting and handling of client money. This protection will extend to Alberta and British Columbia clients of BB PLC.

### **Decision**

5. The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.
6. The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that, and for so long as:
  - (a) any trade in an exchange contract by either Filer to a client in Alberta or British Columbia is conducted only on behalf of a Qualified Party;
  - (b) exchange contracts are traded by the Filers only on Non-Canadian Exchanges;
  - (c) BCI maintains in good standing its registration with the SEC as a broker-dealer, its registration with the CFTC as an FCM and its memberships with FINRA and the NFA;
  - (d) BB PLC maintains in good standing its authorizations with the UK Regulatory Authorities;
  - (e) when opening an account for a Qualified Party, the relevant Filer provides to the Qualified Party:
    - (i) a statement that there may be difficulty in enforcing any legal rights against the Filer or any of its directors, officers, employees or agents because they are resident outside Alberta or British Columbia, as the case may be, and all or substantially all of their assets are situated outside Alberta or British Columbia, as the case may be;
    - (ii) a statement that the Filer is not a registrant and, accordingly, the protection available to clients of a dealer registered under the securities legislation of Alberta or British Columbia, as applicable, will not be available to clients of the Filer;
    - (iii) the name and address of the Filer's agent for service in Alberta or British Columbia, as applicable; and
    - (iv) a statement providing risk disclosure substantially similar to any required under the Act for registered dealers trading in derivatives, in the case of clients in Alberta, or under British Columbia Form 91-903F *Risk Disclosure Statement (Exchange Contracts)* for registered dealers trading in exchange contracts, in the case of clients in British Columbia;
  - (f) BCI notifies the Commission promptly of:

- (i) any restrictions or conditions placed on its registration with the SEC or CFTC; or
- (ii) any sanctions imposed on it in connection with its activities as a broker-dealer or an FCM

under a settlement agreement entered into with the SEC or CFTC, pursuant to an order issued by the SEC or CFTC, or otherwise required by the SEC or CFTC;

(g) BB PLC notifies the Commission promptly of:

- (i) any restrictions or conditions placed on its authorizations with the UK Regulatory Authorities; or
- (ii) any sanctions imposed on it in connection with its activities as a dealer

under a settlement agreement entered into with either of the UK Regulatory Authorities, pursuant to an order issued by either of the UK Regulatory Authorities, or otherwise required by the UK Regulatory Authorities; and

(h) each Filer has provided to each of the Commission and the British Columbia Securities Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as an Appendix to this decision.

7. This decision will take effect on May 27, 2022 and expire the earlier of:

- (a) May 27, 2027; and
- (b) 180 days after the coming into force of any change to Alberta or British Columbia securities laws, as applicable, regarding over-the-counter derivatives transactions and registration of derivatives dealers.

**For the Commission:**

*“original signed by”*

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Tom Cotter  
Vice-Chair

*“original signed by”*

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Kari Horn  
Vice-Chair

## APPENDIX

### Submission to Jurisdiction and Appointment of Agent for Service

Name of person or company ( <b>International Firm</b> ):
If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number for the firm:
Jurisdiction of Incorporation for the International Firm:
Head office address of the International Firm:

The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

Name:
E-mail address:
Phone:
Fax:

The International Firm is relying on an exemption order under section 144 of the Securities Act (Alberta) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions, and Ongoing Registrant Obligations* (the Relief):

- ☐ Section 8.18 [international dealer]  
☐ Section 8.26 [international adviser]  
☐ Other [specify]:

Name of agent for service of process (the <b>Agent for Service</b> ):
Address for service of process on the Agent for Service:

The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a **Proceeding**) arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

Until 6 years after the International Firm ceases to rely on the Relief, the International Firm must submit to the regulator

- a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30<sup>th</sup> day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and
- an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30<sup>th</sup> day before any change in the name or above address of the Agent for Service This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated:
(Signature of the International Firm or authorized signatory)
(Name of Signatory)
(Title of Signatory)

The undersigned accepts the appointment as Agent for Service of [*Insert name of International Firm*] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated:
(Signature of the Agent for Service or authorized signatory)

(Name of Signatory)
(Title of Signatory)