

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 102254 / January 22, 2025**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21181**

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<b>In the Matter of</b>	:	
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<b>Barclays PLC and Barclays Bank</b>	:	<b>NOTICE OF PROPOSED PLAN OF</b>
<b>PLC,</b>	:	<b>DISTRIBUTION AND</b>
	:	<b>OPPORTUNITY FOR COMMENT</b>
<b>Respondents.</b>	:	
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Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission's (the "Commission") Rules on Fair Fund and Disgorgement Plans (the "Commission's Rules"), 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution (the "Proposed Plan") for the distribution of monies paid in the above-captioned matter.

On September 29, 2022, the Commission issued an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (the "Order")<sup>1</sup> against Barclays PLC ("Barclays") and Barclays Bank PLC ("Barclays Bank") (collectively, the "Respondents"). In the Order, the Commission found that Barclays Bank failed to put into place any internal control around the real-time tracking of securities being offered or sold off of its Commission-registered shelf registration statements. As a result of this failure, between June 26, 2019, and March 9, 2022, Barclays Bank offered and sold an unprecedented number of securities—cumulatively totaling approximately \$17.7 billion—in excess of what it had registered with the Commission, in violation of Sections 5(a) and 5(c) of the Securities Act. In connection with the over-issuances and internal control failure, Barclays and Barclays Bank restated their year-end 2021 audited financial statements filed with the Commission.

The Commission ordered the Respondents to pay a \$200,000,000 civil penalty to the Commission. The Commission ordered the funds paid pursuant to the Order be held in an account at the United States Treasury pending a decision whether the Commission, in its discretion, would seek to distribute the funds.

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<sup>1</sup> Securities Act Rel. No. 11110 (Sept. 29, 2022).

On March 30, 2023, the Commission issued an order<sup>2</sup> that created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty paid can be distributed to harmed investors (the “Fair Fund”).

The Fair Fund includes the \$200,000,000 paid by the Respondents. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund has been deposited in a Commission-designated account at the U.S. Department of the Treasury, and any interest accrued will be added to the Fair Fund.

## **OPPORTUNITY FOR COMMENT**

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Proposed Plan from the Commission’s public website at <https://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Proposed Plan by submitting a written request to Noel Gittens, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

The Commission welcomes public comment concerning the proposal to distribute the Fair Fund to harmed investors who traded on a U.S. exchange and harmed investors who traded on a foreign exchange using a single claims process.

All persons who desire to comment on the Proposed Plan, including the scope of eligibility and distribution methodology, may submit their comments, in writing, no later than thirty (30) days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission’s Internet comment form (<https://www.sec.gov/litigation/admin.shtml>); or
3. by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov).

Comments submitted by email or via the Commission’s website should include “Administrative Proceeding File No. 3-21181” in the subject line. Comments received will be publicly available. Persons should submit only information they wish to make publicly available.

## **THE PROPOSED PLAN**

The Net Available Fair Fund<sup>3</sup> is comprised of the \$200,000,000 civil money penalty paid by the Respondents, plus interest and income earned thereon, less taxes, fees, and expenses.

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<sup>2</sup> Order Establishing a Fair Fund, Exchange Act Rel. No. 97221 (Mar. 30, 2023).

<sup>3</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

The SEC’s economists have determined that following Barclays’ disclosure of the over-issuance of its securities on March 28, 2022, the price of its ordinary shares declined 3.7% in the U.K., and the price of its American Depositary Receipts (“ADRs”) declined 3.4% in the U.S. Based on the facts and circumstances presented in this matter, the Commission proposes, for the first time in an administrative proceeding, to use a single claims process to compensate investors who purchased or acquired ADRs on a U.S. exchange and ordinary shares/common stock on a foreign exchange, and were harmed by a violation of the federal securities laws. Specifically, the Fair Fund will be allocated in two stages: first to investors who suffered Recognized Losses on Barclays ADRs, and then, from any remaining funds to investors who incurred Recognized Losses on Barclays ordinary shares due to Respondents’ violations.

In determining the distribution methodology and the scope of eligible claimants, the Commission considered the Supreme Court’s decision in *Morrison v. Nat’l Australia Bank Ltd*<sup>4</sup> that reasserted a canon of statutory construction imposing a general presumption against the extraterritorial application of the U.S. securities laws, unless such application is expressly conferred by statute. In *Morrison*, the Supreme Court analyzed whether, in the context of a private cause of action relating to transactions executed solely on a foreign exchange, the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder extend to transnational fraud. Relying upon the “longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States,”<sup>5</sup> the Court held that Section 10(b) and Rule 10b-5 of the Exchange Act do not provide a cause of action to foreign plaintiffs suing foreign and U.S. defendants for misconduct in connection with securities traded on a foreign exchange. The Court rejected the notion that the Exchange Act reaches conduct occurring in the U.S. that affects foreign exchanges or transactions because such an application could be incompatible with the laws of foreign countries relating to the same conduct.

The Commission seeks to distribute, for the benefit of harmed investors, the civil penalty collected in connection with its administrative action against Barclays, a U.S. issuer, for its violations of the reporting, internal controls, and recordkeeping provisions of the federal securities laws. On March 28, 2022, in a report provided to the London Stock Exchange and furnished to the SEC on Form 6-K, Barclays revealed, for the first time, a material weakness in certain aspects of its control environment and the control environment of Barclays Bank related to the over-issuance of securities and, consequently, in each company’s respective internal controls over financial reporting.<sup>6</sup> Following this disclosure, the price of Barclays’ ADRs and ordinary shares declined. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (“SOX §308”), as amended by Section 929B of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Commission proposes to compensate harmed investors who were victims of Barclays’ violations of the federal securities laws. SOX §308(a) provides:

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<sup>4</sup> 561 U.S. 247 (2010)

<sup>5</sup> *EEOC v. Arabian American Oil Co.*, 499 U.S. 244,248.

<sup>6</sup> On March 28, 2022, Barclays Bank announced its intent to conduct a rescission offer, with respect to the over issuance, which commenced on August 1, 2022, and expired on September 12, 2022.

(a) *Civil penalties to be used for the relief of victims* – If, in any judicial or administrative action brought by the Commission under the securities laws, the Commission obtains a civil penalty against any person for a violation of such laws, or such person agrees, in settlement of any such action, to such civil penalty, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.

In contrast to the antifraud provisions of the Exchange Act that were at issue in *Morrison* and are designed to regulate conduct, SOX §308(a) does not regulate conduct but rather confers a benefit on a class of people, specifically victims of violations of the federal securities laws. Distributing funds pursuant to this provision to all victims of Barclays’ violations furthers the Commission’s core mission of investor protection<sup>7</sup> without implicating the sovereignty of foreign nations – one of the core animating principles of the *Morrison* decision. The proposed distribution approach is also fair and reasonable,<sup>8</sup> and consistent with prior proceedings in which the Commission and district courts have approved distribution plans proposing to disburse Fair Funds to investors who traded on a foreign exchange, after compensating injured U.S. investors. *See SEC v. BP p.l.c.*,<sup>9</sup> *In the Matter of Logitech International*,<sup>10</sup> and *SEC v. CR Intrinsic Invs., LLC*.

It is anticipated that there will be sufficient funds to allow all eligible harmed investors to recover under the Proposed Plan. Thus, distributing to both foreign and domestic purchasers as part of a single distribution will reduce both the time and the additional administrative expenses of conducting two separate distributions when compensation of all eligible harmed investors is anticipated at the time of proposal of the distribution plan.

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<sup>7</sup> As noted in the Commission’s description of its mission to provide investor protection, “The [federal securities laws](#) we oversee are based on a simple and straightforward concept: everyone should be treated fairly and have access to certain facts about investments and those who sell them.” [SEC.gov | Mission](#)

<sup>8</sup> District courts have held that an SEC distribution plan need only be “fair and reasonable” in light of the circumstances. *See Off. Comm. of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 82-83 (2d Cir. 2006) (“*WorldCom*”) (citing *Wang*, 944 F.2d 80, 85(2d. Cir. 1991).

<sup>9</sup> Order Approving a Distribution Plan for the BP Fair Fund and Including Post-Judgment Interest in the Fair Fund, Case No. 12-CV-2774-CJB-SS (E.D. La, July 25, 2023).

<sup>10</sup> Exchange Act Rel. Nos. 84493 (Oct. 26, 2018) and 93062 (Sept. 20, 2021).

The Proposed Plan provides for the distribution of the Net Available Fair Fund to investors who purchased or acquired Barclays American Depositary Receipts traded on the New York Stock Exchange under the symbol BCS and Barclays ordinary shares traded on the London Stock Exchange under the symbol BARC between June 26, 2019, and March 27, 2022, both dates inclusive, and suffered a loss as calculated in accordance with the Plan of Allocation attached as Exhibit A to the Proposed Plan.

By the Commission.

Vanessa A. Countryman  
Secretary