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January 23, 2023

By Electronic Mail

Anne E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

James P. Sheesley, Assistant Executive Secretary
Attention: Comments RIN 3064–AF86
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Advanced Notice of Proposed Rulemaking, Resolution-Related Resource Requirements for Large Banking Organizations; Federal Reserve Docket No. R-1786, RIN 7100–AG44; FDIC RIN 3064-AF86

Dear Ms. Misback and Mr. Sheesley:

The Institute of International Bankers ("IIB") appreciates the opportunity to comment on the advanced notice of proposed rulemaking issued by the Board of Governors of the Federal Reserve System (the "Federal Reserve") and Federal Deposit Insurance Corporation (the "FDIC") to solicit public input regarding whether an extra layer of loss-absorbing capacity could improve optionality in resolving a large banking organization (an "LBO") or its insured depository institution ("IDI"), and the costs and benefits of such a requirement.[1] We write

[1] Resolution-Related Resource Requirements for Large Banking Organizations, 87 Fed. Reg. 64,170 (Oct. 24, 2022) (the "ANPR"). In this letter, we refer to the Federal Reserve and the FDIC collectively as the "Agencies."

primarily to respond to Question 3 of the ANPR, which asks "how any new requirements should be applied to the U.S. subsidiaries of foreign banking organizations [("FBOs")]."[2]

The IIB represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB's members consist principally of international banks that operate branches, agencies, bank subsidiaries, and broker-dealer subsidiaries in the United States. The U.S. operations of FBOs are an important source of credit for U.S. borrowers and enhance the depth and liquidity of U.S. financial markets. FBOs also contribute greatly to the U.S. economy through the direct employment of U.S. citizens and permanent residents, as well as through other operating and capital expenditures.

In our view, any new or expanded long-term debt ("LTD") requirement should not apply to intermediate holding companies ("IHCs") of FBOs.[3] IHCs are uniquely positioned as compared to domestic banking organizations, as they are part of larger global firms that are already subject to robust resolution-related requirements and enhanced prudential standards. Indeed, to the extent the Agencies were to consider a rulemaking related to resolution-related resource requirements, they should use that opportunity to recalibrate downward the existing internal TLAC ("iTLAC") requirements currently applicable to IHCs of GSIB FBOs to more accurately reflect the risk profile, local supervisory framework, and particular structural considerations relevant to IHCs.

I. Any Newly Proposed LTD Requirement Should Not Apply to IHCs of FBOs

Any newly proposed LTD requirement should not apply to IHCs of FBOs, for the reasons discussed below.[4]

A. IHCs, and the U.S. Operations of FBOs More Generally, Are Part of International Groups That Have Developed Home Country Resolution Plans, Including With Respect to Their U.S. Operations

Since the global financial crisis, FBOs have developed single-point-of-entry and multiple-point-of-entry home-country resolution plans, including with respect to their U.S. operations, guided by international and home- and host-country standards to facilitate effective resolution of the bank as a whole. The Agencies have recognized that home-country resolution

[2] See ANPR at 64,174: "Question 3: The agencies invite comment on how any new requirements should be applied to the U.S. subsidiaries of foreign banking organizations. Top-tier U.S. intermediate holding company (IHC) subsidiaries of foreign GSIBs are currently subject to long-term debt requirements. To what extent should those top-tier U.S. holding companies of foreign firms or their insured depository institutions that have a similar risk profile to the domestic large banking organizations that might be subject to any long-term debt requirement considered in this ANPR, be subject to any new requirements in line with those applied to domestic large banking organizations?" (footnote omitted).

[3] We note that certain IHCs that are subsidiaries of global systemically important bank ("GSIB") FBOs are already subject to total loss-absorbing capacity ("TLAC") and clean holding company standards. See 12 C.F.R.§§ 252.160-252.167.

[4] For the same reasons, clean holding company requirements should similarly not be expanded to apply to IHCs of FBOs that are not GSIB FBOs.

is the preferred resolution outcome for many FBOs.[5] In addition to being included in this home-country exercise, IHCs and other U.S. operations of FBOs are also subject to the Agencies' resolution planning requirements (and in some cases, the FDIC's resolution planning requirements for IDIs), and in the U.S. resolution planning context, have developed single-point-of-entry or multiple-point-of-entry resolution strategies for their U.S. operations.

In recent years, FBOs have engaged in intensive resolution planning, for both their global and U.S. operations, significantly enhancing their ability to withstand losses and ensuring that they would be resolvable. These steps include (1) significantly increasing capitalization levels and liquidity resources, (2) simplifying organizational structures, (3) streamlining business mixes, and (4) enhancing affiliate and third-party service arrangements to ensure continued operations in stress and resolution scenarios *(e.g.*, resolution-resilient service level agreements). As a result, FBOs have reduced their potential to pose risk to the U.S. financial system and are in a better position to facilitate the resolution of their U.S. operations, should the need arise. Simultaneously, the home countries of FBOs have undertaken significant reforms in capital, liquidity, bail-in-able resources, corporate structures, and resolution frameworks and strategies to implement both domestic and international standards.

These requirements taken together are robust, and new or expanded LTD requirements are unnecessary.

B. IHCs Pose Less Risk to U.S. Financial Stability Than Domestic Banking Organizations in the Same Category

Based on a variety of risk-based indicators, the size, and activities of IHCs overall generate less risk for the U.S. financial system than domestic banking organizations in the same category. Compared to similarly categorized domestic banking organizations, IHCs on average are smaller (based on total assets), less risky (based on risk-weighted assets ("RWA")) and better capitalized (based on tier 1 capital).[6]

IHCs in Category III have an average of $218.5 billion in total assets, whereas the average for holding companies of domestic banking organizations in the same category is $545.6 billion.[7] Average RWA are $106.8 billion and $345.6 billion, respectively.[8] Average RWA density of these IHCs is approximately 49%; average RWA density for holding companies of

5 See Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 Fed. Reg. 83,557, 83,558 (Dec. 22, 2020) ("Resolution Plan Guidance").

6 The ANPR focuses on banking organizations in Categories II and III, but no current IHCs of FBOs are in Category II. We have assumed that Category III includes the following banking organizations: (a) IHCs: TD Group US Holdings LLC, HSBC North America Holdings Inc., UBS Americas Holding LLC, Barclays US LLC, DB USA Corporation, and Credit Suisse Holdings (USA), Inc. and (b) domestic banking organizations: Charles Schwab Corporation, U.S. Bancorp, PNC Financial Services Group, Inc., and Capital One Financial Corporation.

7 See FR Y-9C filings as of September 30, 2022.

8 Id.

domestic banking organizations in the same category is approximately 63%, indicating IHCs have a less risky asset mix on average.

Large FBOs also continue to capitalize their IHCs at significantly higher levels than domestic banking organizations, even after the implementation of tiering for capital planning and stress testing requirements[9] and accounting for firm size. For example, the average common equity tier 1 ratio of the IHCs in Category III was 18.7% as of September 30, 2022, 43% higher than that of the domestic banking organizations in the same category, at 13.1%.[10] The average tier 1 capital ratio, total capital ratio, and tier 1 leverage ratio of such IHCs are also noticeably higher on average compared to these domestic banking organizations.[11]

In addition, as recognized by former Vice Chair Quarles, FBOs' U.S. operations are part of larger organizations in which capital may be allocated among IHCs and other non-U.S. subsidiaries as part of FBOs' global, enterprise-wide capital planning to maintain the capital strength of all subsidiaries and avoid gaps that could lead to group fragility.[12] By contrast, distributions to public shareholders of domestic banking organizations leave the organization and do not promote group stability.

For these reasons, it is not necessary to consider imposing additional LTD requirements on IHCs of FBOs.

C. The Regulatory Requirements for the U.S. Operations of FBOs Have Been Deliberated Extensively, Including in Recent Years, and Do Not Need To Be Further Supplemented

As noted above, post-financial crisis regulatory reforms, including those stemming from the Dodd-Frank Wall Street Reform and Consumer Protection Act, have increased the stability of FBOs' U.S. operations, including IHCs. These reforms do not need to be further supplemented, particularly in light of the fact that several FBOs continue to de-risk their U.S. operations. In 2019, the Agencies released final rules tiering the enhanced prudential standards and resolution planning requirements, including as they apply to FBOs, to the risk

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9 Capital Planning and Stress Testing Requirements for Large Bank Holding Companies, Intermediate Holding Companies and Savings and Loan Holding Companies, 86 Fed. Reg. 7,927 (Feb. 3, 2021).

10 See FR Y-9C filings as of September 30, 2022.

11 Id. At the same time, several IHCs have reduced their risk profiles in the United States. For example, IHCs in Category III have generally reduced or experienced limited growth in their total nonbank assets, total short-term wholesale funding, cross-jurisdictional activity, and total off-balance sheet exposures since mid-2020 and in contrast to domestic banking organizations in the same category. See FR Y-15 filings as of June 30, 2020 and September 30, 2022. In addition, these IHCs have reduced their aggregate broker-dealer assets in the past five years, decreasing from a combined total of approximately $666.5 billion to $534.3 billion from 2016 to 2021. See Audited annual statements of financial condition and balance sheets as of FY 2016 and FY 2021.

12 Randal K. Quarles, Vice Chair for Supervision, Federal Reserve, Trust Everyone—But Brand Your Cattle: Finding the Right Balance in Cross-Border Resolution (May 16, 2018) ("Brand Your Cattle Speech") (noting that "adequate flexibility for the parent to deploy resources where needed is likewise in the host regulator's interest.").

profile of a banking organization.[13] The final rules were the result of a lengthy notice and comment process and in-depth deliberation by the Agencies as to how best to categorize the risks of various types of banking organizations based on ranges of risk factors.

By grouping banking organizations into "categories," this tiering framework anticipated that firms would move in and out of categories based on changes in risk attributes[14] and, through that mechanism, remain subject to appropriately stringent standards. The tiering framework was designed to be predictable and transparent and intentionally did not provide for "discretionary adjustments of thresholds on a case-by-case basis."[15] The basic structure of the tiering framework creates incentives for banking organizations to reduce their financial stability risk profile and to consider the benefits and burdens of crossing into a different category. Tiering has been implemented carefully and has not jeopardized the prudential objectives of post-crisis reforms.

In the ANPR, the Agencies express concern about a recent increase in the size of non-GSIB LBOs, particularly those in Category III, due to merger activity and organic growth, and suggest that the increased size of these institutions may increase costs of resolution.[16] However, these LBOs remain within the recently and deliberately defined category. The Agencies acknowledge that "most of these firms' overall business remains concentrated in traditional banking activities, and their proportion of total banking sector assets has remained relatively constant."[17]

The resolution planning framework for large FBOs has been revisited even more recently than 2019. In 2020, the Agencies finalized resolution planning guidance for certain large FBOs (the "2020 Guidance") and decided not to include certain expectations, including, *e.g.*, separability expectations, which the Agencies had concluded were not helpful in the FBO context.[18] Consequently, with respect to the ANPR's question about whether separability requirements should be imposed,[19] that issue already has been addressed by the 2020 Guidance, and there have been no developments since 2020 that would suggest a need to revisit that

13 See Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 Fed. Reg. 59,032 (Nov. 1, 2019); Resolution Plans Required, 84 Fed. Reg. 59, 194 (Nov. 1, 2019).

14 See id. at 59,049 ("To move into a category of standards or to determine the category of standards that would apply for the first time, a banking organization would rely on an average of the previous four quarters... To move to a less stringent category of standards, a banking organization must report risk-based indicator levels below any applicable threshold for the more stringent category in each of the four preceding calendar quarters… The final rule does not provide for discretionary adjustments of thresholds on a case-by-case basis, because such an approach would diminish the transparency and predictability of the framework and could reduce incentives for banking organizations to engage in long-term management of their risks") (footnote omitted).

15 Id.

16 ANPR at 64,171.

17 Id.

18 See Resolution Plan Guidance at 83,567.

19 See ANPR at 64,175.

conclusion. Separability requirements should not be reimposed on FBOs subject to such guidance or newly imposed on any other FBOs.

In addition, the 2020 Guidance removed expectations around resolution capital adequacy and planning ("RCAP"), allowing FBOs subject to that guidance more flexibility in their internal positioning of capital resources.[20] The ANPR asks whether LTD issued externally by an LBO's IDI subsidiary should be permitted to count toward the top-tier holding company's requirements,[21] and more generally, which entity within an LBO's corporate structure would be the ideal issuer of LTD.[22] In this respect, we would reemphasize the importance of allowing the U.S. operations of FBOs to position capital in a manner that allows for maximum flexibility and efficiency in a stress scenario. Consistent with the 2020 Guidance, FBOs, including those GSIB FBOs currently subject to TLAC and LTD requirements, should not be subject to any prescriptive requirements related to the positioning of capital and other loss-absorbing instruments within their U.S. operations.

In addition, special care should be taken before evaluating any additional U.S. host-country requirements applicable to the U.S. operations of FBOs. Disproportionate requirements in the United States can lead to similar demands by other host-country supervisors. This could, in turn, lead to increased fragmentation and less orderly approaches to the resolution of internationally-active banking organizations, making such organizations less resilient on an enterprise-wide basis and increasing financial stability risks in both home and host jurisdictions.[23]

II. iTLAC Requirements Currently Applicable to IHCs of GSIB FBOs Should Be Recalibrated to More Accurately Reflect the Risk Profile, Local Supervisory Framework, and Particular Structural Considerations Relevant to IHCs

To the extent the Agencies were to consider a rulemaking related to resolution-related resource requirements, they should use that opportunity to recalibrate downward the existing iTLAC requirements currently applicable to IHCs of GSIB FBOs. As the IIB has articulated previously,[24] the iTLAC requirements currently applicable to IHCs of GSIB FBOs should be recalibrated to more accurately reflect the risk profile, local supervisory framework, and particular structural considerations relevant to IHCs.

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[20] See Resolution Plan Guidance at 83,563 ("The final guidance does not include RCAP expectations concerning the appropriate positioning of capital and other loss-absorbing instruments among the U.S. IHC and its subsidiaries because existing TLAC requirements applicable to the U.S. IHC provide a backstop of resources that is appropriate to the size and complexity of the Specified FBOs.").

[21] ANPR at 64,174-75.

[22] ANPR at 64,173.

[23] See Wilson Ervin, Brookings Center on Regulation and Markets, Understanding 'ring-fencing' and how it could make banking riskier, (Feb. 7, 2018) (finding that for a hypothetical bank with four equally sized subsidiaries, the risk of group failure could increase by 5x or more if extensive ring-fencing were required).

[24] See, e.g., Letter from Briget Polichene, CEO, IIB, to the Federal Reserve (Nov. 20, 2020); Letter from Briget Polichene, CEO, IIB, to Ann E. Misback, Secretary, Federal Reserve (June 25, 2018); Letter from Sarah A. Miller, CEO, IIB, to Robert deV. Frierson, Secretary, Federal Reserve (Feb. 19, 2016).

The calibration of iTLAC involves a trade-off. If iTLAC requirements are set too high, the effects could include having prepositioned TLAC resources in the wrong jurisdiction when the foreign parent approaches resolution, and impairing the types of home-host country supervisory cooperation in a cross-border resolution that TLAC requirements were meant to promote. Such misallocation risk arises if an FBO prepositions excessive resources in a single jurisdiction at the expense of flexibility to address losses in other jurisdictions.[25]

In addition, other jurisdictions may impose prepositioning requirements that are higher than necessary to ensure home-host cooperation during resolution. An excessively high calibration level could result in similarly high levels of prepositioning in other jurisdictions, limiting the ability of GSIBs—including those headquartered in the United States—to flexibly respond to losses in different jurisdictions and potentially making them less resilient.

iTLAC should be calibrated to facilitate home-host cooperation and should not necessarily be based on assumed stand-alone losses at an IHC taking a single-point-of-entry approach, given that iTLAC is applied to material subgroups of a GSIB that, for many GSIBs, are expected not to be the subject of resolution powers during the resolution of the GSIB. The primary purpose of this prepositioning is to "facilitate co-operation between home and host authorities and the implementation of effective cross-border resolution strategies."[26]

We appreciate the Federal Reserve's previous efforts to modestly recalibrate TLAC requirements to better align its rules with the practice of other regulators around the world, such as through the 2020 technical amendments to the TLAC buffer calibration for IHCs. Former Vice Chair Quarles had indicated that the Federal Reserve was generally considering recalibrating the iTLAC requirements for IHCs towards the lower end of the FSB's iTLAC requirements and/or streamlining the elements of the resolution loss absorbency regime, which include both TLAC and LTD requirements.[27] We would welcome proposals with such changes.

The FSB's TLAC Term Sheet stipulates that material subgroups should have iTLAC scaled within a range of 75-90% of the minimum external TLAC requirement that would apply if the material subgroup were a resolution group. iTLAC requirements currently applicable to IHCs of GSIB FBOs are calibrated at approximately 90% of the iTLAC requirements applicable to domestic GSIBs, which is the upper end of the range established by

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[25] See Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations; Regulatory Capital Deduction for Investments in Unsecured Debt of Systemically Important U.S. Bank Holding Companies, 80 Fed. Reg. at 74,926, 74,949 (Nov. 30, 2015) (discussing the difference between "contributable" and "prepositioned" resources, the Federal Reserve explains that the "principal benefit of contributable resources is that they avoid the 'misallocation risk' associated with prepositioned resources: Whereas an investment that has been prepositioned with a particular subsidiary cannot easily be used to recapitalize a different subsidiary that incurs unexpectedly high losses, contributable resources can be flexibly allocated among subsidiaries in light of the losses they suffer.").

[26] Financial Stability Board ("FSB"), Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution: Total Loss-absorbing Capacity (TLAC) Term Sheet § 16, at 17 (Nov. 9, 2015).

[27] See Brand Your Cattle Speech.

FSB standards.[28] In our view, this requirement should be no higher than 75% of the external TLAC requirements applicable to domestic GSIBs, taking into consideration the substantially smaller systemic footprints of IHCs, the existing regulatory framework applicable to IHCs, and the availability of parent FBO support. Moreover, to the extent RWAs increase in connection with the Agencies' implementation of the final set of Basel III capital standards, a downward recalibration of iTLAC requirements would be even more important to avoid further increasing required levels of iTLAC (which, as noted above, are already too high).

As we have in the past,[29] we also would respectfully submit that for the IHCs of GSIB FBOs, the requirement that a fixed portion of iTLAC be in the form of LTD is unnecessary and should be eliminated or at least significantly reduced. Among other reasons, this approach is inconsistent with the purpose of iTLAC, which is to ensure that non-resolution entities will be supported during resolution. Notably, when the FSB's TLAC Term Sheet discusses an expectation that a portion of TLAC be in the form of debt, it is only in the context of external TLAC, not iTLAC. In our view, this is the correct approach.

An approach to iTLAC that facilitates home-host cooperation, achieves a balanced global result, and ensures resilience at the international level will ultimately better protect the U.S. financial system.

III. Conclusion

In our view, any new or expanded LTD requirement or enhanced resolvability requirements, such as clean holding company requirements or separability expectations, should not be proposed to apply to IHCs of FBOs. Additional resolution-related resource requirements are unnecessary given the robust resolution-related requirements and prudential standards that already apply to these IHCs. To the extent the Agencies were to consider a rulemaking related to resolution-related resource requirements, they should use that opportunity to recalibrate downward the existing iTLAC requirements currently applicable to IHCs of GSIB FBOs to more accurately reflect the position and characteristics of IHCs.

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28 FSB, Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution: Total Loss-absorbing Capacity (TLAC) Term Sheet § 18 at 19 (Nov. 9, 2015).

29 Letter from Sarah A. Miller, CEO, IIB, to Robert deV. Frierson, Secretary, Federal Reserve (Feb. 19, 2016).

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We appreciate your consideration of our comments on the ANPR. If we can answer any questions or provide any further information, please contact me (646-213-1149, swebster@iib.org) or our CEO, Beth Zorc (646-213-1147, bzorc@iib.org).

Very truly yours,

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