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<u>**By e-mail:**</u>
Federal Reserve System
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Regulation YY; Docket No. 1438
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Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies

The Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – BaFin) and the Deutsche Bundesbank would like to take the opportunity to comment on your proposal regarding the implementation of the Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies pursuant to sections 165 and 166 of the Dodd-Frank Act (DFA). We appreciate your efforts to strengthen the stability of the U.S. financial markets, as they are of the utmost importance to the global financial system. In view of this fact, we would like to comment on the global scope of your proposed rules. Before discussing the rules in more detail, we would like to stress that we strongly advocate further enhancements to the supervision of global SIBs. These, however, should be achieved through joint initiatives and on a consolidated basis, as “go it alone” national initiatives can tend to weaken the global setup and stability of global SIBs instead of stabilizing them.

Firstly, the Basel III framework is based on consolidated and internationally coordinated supervision of the cross-border activities of internationally active banks. The decision-making authorities, among them the four U.S. supervisory authorities “the Federal Reserve System (Board and NYC), the OCC and the FDIC”, fought for a level playing field for the global financial markets and their major players. Following the argumentation accompanying the proposed rule, and in view of its consequences, we see increasing risks to this level playing field stemming from a clear tendency towards “renationalizing” supervision, which, in fact, harbors real potential for supervisory arbitrage and global imbalances. At the same time, we see a conflict with the G 20 requirements agreed at the Pittsburgh Summit and potential frictions between the proposed FBO rules and the Basel III requirements, with direct consequences in the form of regulatory inconsistencies.

Secondly, regarding the global principle of approval of equal supervisory systems, the proposed rule will have a negative impact on international cooperation since it does not take appropriate account of consolidated supervision following comparable home country

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standards, as is required by section 165 (b) (2) (B) of the DFA. We strongly believe that the global financial markets can only be supervised globally. From our perspective this means that we should find ways to improve international cooperation among supervisors and not endanger the existing level of collaboration. Solo approaches will not appropriately mirror the complex risks taken by internationally active banks and will create a conglomerate of fragmented supervisory approaches.

Thirdly, we would like to point out that the proposal does not treat FBOs and domestic banks equally in terms of competition. This is particularly true of the proposed provisions on liquidity and funding and the requirement to form a U.S. IHC. Higher funding costs, resulting from the lack of a broad deposit base and the potential impact on IHC stand-alone ratings, would add to this effect. In our view, there would undoubtedly be a negative impact on the competitive structure of the U.S. market. We also see a further conflict with the requirements of section 165 (b) (2) (A) of the DFA.

Fourthly, the proposed requirements on liquidity buffers under recovery and resolution conditions set high standards for the liquidity available to legal entities within the U.S.. Following the line of thought of the proposal, such liquid assets and instruments would therefore be unavailable for free floating within the group as required by a consolidated supervisory approach. Furthermore, this means essentially rejecting the FSB principle concerning a “single point of entry”. Consequently, European banks could be forced to reduce their activities in the U.S., as waivers for group-wide capital requirements would be under threat.

Fifthly, in connection with our fourth point, we see conflicts between the aforementioned U.S.-specific liquidity requirements and global requirements on the preconditions for recovery and resolution that are applicable to internationally active institutions. While we understand the potential motivation behind such a move, we also fear that it might harm international cooperation. In view of the concerns outlined above, we would ask you to carefully reconsider the design of the proposed rule on the implementation of the Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies pursuant to sections 165 and 166 of the DFA.

Finally, we would like to encourage you to strive for joint initiatives with the other supervisors of G-SIBs on a global basis. We think that the most effective way to strengthen supervision is through intense coordination and collaboration rather than “go it alone” national initiatives. The Deutsche Bundesbank and the BaFin can assure you that they stand ready to fully support such efforts.

Sincerely yours,

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