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Chairman Ben Bernanke
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551-0001

Chairman Bernanke:

As I mentioned at our recent Humphrey-Hawkins hearing, I am concerned about the Fed's Proposed Rule to implement Section 165 of the Dodd-Frank Act, which would impose enhanced prudential standards and early remediation requirements for foreign banking organizations and foreign nonbank financial companies.

In particular, four things stand out to me. First, the approach taken in the proposed rule towards foreign owned broker-dealers is different from the regulatory regime that would apply to U.S. broker dealers owned by American companies, particularly in the case of a foreign owned broker-dealer not affiliated with a US insured bank. The Fed is taking a distinctly different approach for these foreign-owned firms and US firms will not be forced to have their comparable broker-dealers placed under a new type of intermediate holding company with separate capital, liquidity and other regulatory requirements beyond the SEC's.

Second, the approach would appear highly discriminatory as a foreign owned broker-dealer would have higher capital standards via the intermediate bank holding company and could not rely on its parent's capital to satisfy US requirements, unlike US firms. The long-standing principle of national treatment has been embedded in US law for over 35 years and was in fact re-enforced in Dodd-Frank and this type of disparate treatment would seem to violate this well-established concept of cross-border supervision.

Third, section 5(c)(3) of the Bank Holding Company Act would appear to be an express statutory provision that prohibits the Federal Reserve from overriding the capital requirements of a functionally regulated subsidiary, such as a broker- dealer subsidy, whose capital requirements are established by the SEC. Under the Fed's proposed rule, it would appear that the IHC approach is merely an artificial artifice, with no statutory basis, to establish a Fed capital requirement on top of SEC's requirements for a foreign-owned broker-dealer. This would seem to directly violate this Bank Holding Company Act provision, particularly in the case of a foreign-owned broker-dealer that has no US bank affiliates.

Finally, sections 165(b)(3) & 165(b)(4) of Dodd-Frank, appear to say that in prescribing prudential standards under 165 that the Fed, should take into account whether a firm

owns an insured depository institution (Sec.165(B)(3)(ii)), and shall consult with the firm's primary supervisor regarding a functionally regulated subsidiary.(Sec. 165(b)(4)) Again in the case of a foreign owned broker-dealer that is not affiliated with an insured depository institution there is no evidence that the Fed has complied with these express provisions of Dodd-Frank in the rulemaking.

Beyond these specific concerns, it is worth pointing out that during consideration of the Dodd-Frank Act, Congress explicitly addressed how foreign banking organizations should be regulated in the U.S. While Dodd-Frank instructs the Federal Reserve to apply enhanced prudential standards upon banking institutions, both domestic and foreign, Congress expressly maintained a notion of deference to home country supervision for jurisdictions with comparable consolidated supervisory regimes. The current proposal essentially eradicates decades of codified law and regulatory practice in international banking by creating an expansion of Fed power over foreign bank supervision, without any regard for comparable or even more robust home country consolidated supervisory requirements. Any notion that this comparability analysis should only be limited to a foreign branch and does not extend to the broader home country regulation of the consolidated firm is misplaced and would again defy years of practice under the international banking statutes as well as Congressional intent.

Moreover, the proposal may violate the internationally-recognized and codified principle of "national treatment," which prohibits a host country from applying disparate standards to domestic and foreign-owned entities. Under this trade construct, for over 35 years, both U.S. and foreign banks have been evaluated based on their parent company's global capital & liquidity for supervisory purposes. Under GATT/WTO principles and the International Banking Act, the Fed has generally deferred to the home country regulator for capital adequacy of the parent. The current proposal, in requiring a separately capitalized intermediate holding company to be the top U.S.-based entity, applies the enhanced prudential standards across a host of legal organizational entities, including foreign-owned broker dealers, despite the same standards not being applied to domestic-owned broker-dealers.

It is important that the US remain a hospitable place for both domestic and international providers of financial services products, for it is ultimately the consumer that benefits from the choice and competition created by a vibrant and diverse marketplace. As always, thank you for your thoughtful consideration of these matters and I look forward to your reply.

Sincerely,

Spencer Bachus
Member of Congress