bankenverband

Comments

of the Association of German Banks on Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies; Docket no. R-1438 and RIN 7100-AD-86

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Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies; Docket no. R-1438 and RIN 7100-AD-86

Dear Mr. deV. Frierson:

The Association of German Banks represents the interests of more than 200 privately-owned banks in Germany, including several Germany-headquartered banks with US operations and the German offices of several US banks, in the field of banking and economic policy.

We appreciate the opportunity to comment on the proposed rule on enhanced prudential standards and early remediation requirements for foreign banking organizations and foreign nonbank financial companies (the proposed rule), implementing Sections 165 and 166 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act, or DFA).

I. Introductory comments

We fully support the aim of the rule proposal by the Board of Governors of the Federal Reserve System (the Board) to safeguard and strengthen financial stability of the US operations of large foreign banking organizations (FBOs). At the same time, however, we are deeply concerned that the Board's proposed rule would unduly constrain US activities for German and other non-US banks.

As explained in more detail below, it is our view that the Board's proposal is overly burdensome, would work to the detriment of competitive equality of non-US banks, does not adequately take into account the prudential standards implemented, or about to be implemented, in their home countries, and calls international cooperation between regulatory authorities into question.

For German banks, the United States remains the most important financial market, after the EU single market for financial services. It goes without saying that, for German banks, which contribute to the US market by providing credit, liquidity and jobs, US rules are highly important – whether set forth in legislation by Congress, regulation by US authorities or case law. The same is true for FBOs from other countries. Against this background, we would expect the Board's proposed rule to have potentially severely adverse implications for international banking and securities businesses if it were finalized without appropriate modifications, with results that would be amplified and multiplied were other jurisdictions to adopt similar approaches. This would have dire economic consequences for businesses, consumers and public finances in the US and elsewhere. What is more, financial stability could be affected negatively rather than positively, quite contrary to the proposal's intention.

Finally, implementation of the proposed rule in its current form could make the upcoming negotiations on a Transatlantic Trade and Investment Partnership more demanding if the European Union were to perceive such a step as creating new obstacles to trade in financial services.

We, therefore, respectfully urge the Board to adopt a final rule that continues its long-standing approach of, first and foremost, giving due regard to home-country rules of foreign banks. Any additional measures should be applied only to address real systemic risks in the US caused on a case-by-case basis by US operations of a FBO.

Allow us to explain our concerns, which we have summarized above, in more detail in the following sections. Please note that we also support the comment letters authored, or co-authored, by the European Banking Federation (EBF), the Institute of International Bankers (IIB), the International Banking Federation (IBFed), and the Institute of International Finance (IIF).[1]

II. Specific comments

1. The proposed rule is overly burdensome and does not seem to be in line with the statutory language

In our opinion, Sections 165 and 166 of the Dodd-Frank Act, which the Board proposal seeks to implement, should be interpreted much less restrictively than in the proposed rule. In particular, we reject the proposal to impose an Intermediate Holding Company (IHC) structure on US operations (excluding branches and agencies) of FBOs.

Section 165 of the Dodd-Frank Act includes specific provisions which indicate that a "one-size-fits-all" approach should not be used and that for non-US banks comparable home-country standards should be given due regard. Section 165(a) (2) gives the Board authority to differentiate between covered companies on an individual basis or by category, and Section 165(b)(2) directs the Board to take into account the extent to which the FBO is subject on a consolidated basis to home-country standards.

Measured against these statutory provisions, the adoption by regulation of an across-the-board IHC requirement and its related additional prudential standards for FBOs whose US non-branch assets are equal to or greater than USD 10bn not only seems unnecessary but could even be perceived to violate the very legal provision to be implemented.

[1] The Association of German Banks is a member of the EBF (which, in turn, is a member of the IBFed), the IIB and an associate member of the IIF.

We firmly believe that the recognition of comparable home-country standards should remain the guiding principle of host-country regulation of internationally active banks, as is the case in the European Union and in Germany. Consequently, the principle of national treatment must not be interpreted too narrowly as identical treatment of FBOs and domestic banks, but in the sense of competitive equality from a global rather than local market perspective, taking into account comparable home-country standards of FBOs.[2]

By contrast, we note that the proposed rule's nationalistic approach would lead to duplication and an excessive operational burden from the implementation and maintenance of multiple prudential regimes, and, in the end, produce significant broader costs for the financial sectors and economies affected.[3] FBOs would be subject to multiple, overlapping and redundant prudential requirements regarding capital, leverage, liquidity, stress testing and single counterparty credit limits (SCCLs). Consequently, FBOs would have to bear much higher operating and compliance costs in order to respect both their home-country and Fed-specific rules. Due to the overarching IHC requirement for all bank and non-bank financial subsidiaries of FBOs, some IHCs would be mechanically pushed over the threshold to become an advanced-approach bank according to the Fed's Basel III rule, and would have to implement five different sets of capital calculations, namely: (i) home-country advanced approaches; (ii) home-country Basel I floor; (iii) US advanced approaches; (iv) the US Collins amendment floor calculation (which renders the benefits of the US advanced approaches largely moot); and (v) the SEC net capital rule for broker-dealer subsidiaries.

We also note that the proposal is neither consistent with the Basel Accord's capital ratio calculations nor with the Basel III phase-in, which extends to 2019. We urge the Board to spare FBOs such multiple reporting requirements and disciplines which are not in line with the timing and methodology of the Basel Accord's framework.

Compliance costs would therefore be significant, the more so as implementation of the proposed rule in its current form will require reviews of, and modifications to, multiple existing systems and algorithms to ensure compliance.

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[2] In the WTO financial services agreement of 1997 (5th Protocol to the General Agreement on Trade in Services), the EU committed itself to granting the "European passport" under EU banking law to EU banking subsidiaries of non-EU banks. For branches of non-EU-headquartered banks in EU member states, national treatment is applied, with certain prudential reservations. For example, in Germany, branches of non-EU banks generally must hold own funds (dotational capital), which determines their prudential limits (e.g. for lending; cf. Section 53c of the German Banking Act). By regulation, the German Ministry of Finance has, however, alleviated this branch capital requirement for German branches of US banks in recognition of their consolidated home-country regulation and supervision so that they can base their German operations on their global capital and need only to hold the legal minimum amount of dotational capital (€ 5m). Finally, while the EU Financial Conglomerates Directive requires that non-EU holding companies of financial firms operating in the EU be subject to consolidated supervision, it does not force such holding companies to be located in the EU as long as supervision by the regulator in the holding company's home country is deemed to be equivalent to that carried out in the EU.

[3] See sections II.3 and II.4 below for a discussion of the potential broader effects of the proposed rule's approach.

In addition, we also feel that the USD 50bn global assets threshold for other measures delineated in the Fed's proposal was not intended by Congress and is unduly extraterritorial. The two Section 165 proposals by the Board (i.e., the one for domestic banks and the one for FBOs) would apply to 25 US-headquartered bank holding companies and 107 FBOs, only 23 of which have US assets equaling or exceeding USD 50bn. As we see it, these figures alone clearly show a need for the Board to re-interpret the USD 50bn asset threshold in Section 165 DFA to apply to the US operations of FBOs.

There are also unduly extraterritorial aspects with regard to the proposed rule's implementation of the "early remediation" requirements of Section 166 of the DFA. In particular, the structure of the "early remediation" triggers has the effect of requiring non-US banks on a parent consolidated basis to meet US-prescribed minimum risk-based capital ratios and leverage ratios beyond what is required under home-country implementation of Basel III. Moreover, there seems to be a real danger that actions taken vis-à-vis FBOs under US early remediation rules could destabilize recovery efforts at their group or home-country level (see also sections II.3-4).

2. The proposed rule would weaken the competitive position of German and other non-US banks, violating US and international norms of competitive equality

Independently of their consolidated home-jurisdiction regulation and supervision, non-US banks would be burdened with an US IHC and related US capital, liquidity, governance, risk management, stress testing and other requirements as soon as their global and / or US operations exceeded rather modest thresholds.

While it is true that these requirements are formally similar to those proposed by the Board for larger US bank holding companies, a significant additional burden for non-US banks lies in the fact that host-country (i.e., US) rules would interfere with and claim to partly replace their home-jurisdiction rules, while US banks would be spared such treatment (at least for the time being, but see section II.4 below for possible consequences for host-country regimes of US banks). These requirements would effectively trap capital and liquidity of our banks in the US, whereas our banks wish to centrally manage their operations from outside the US.

What is more, the IHC-related requirements would unduly restrict the freedom of choice of the legal structure through which non-US banks wish to conduct their US operations. While a few FBOs may indeed prefer local management of capital and liquidity through an US intermediate holding company above their US financial subsidiaries, German banks do not regard this legal structure as an option best suited for their US and global business models.

Again, we underline that US banks' or US broker-dealers' operations in the EU are not subject to comparable requirements.[4] Thus, the proposed rule would create a significant competitive advantage for internationally active US financial institutions, not only in the US but on a global scale.

Even in the (too narrow) focus of the IHC as a stand-alone institution, which the Board apparently uses as the basis of its comparison with US bank holding company requirements, the proposed rule would lead to the discriminatory result that non-US banks with US non-branch assets equaling or exceeding USD 10bn would be subject to stricter standards in certain fields (e.g., SCCLs) than US bank holding companies with less than USD 50bn in consolidated assets.

In addition, a FBO with a sole US subsidiary presence in the form of a broker-dealer (i.e., without a US-insured bank) would fall under the Board's proposed rule, while a US-headquartered investment banking group that is not a bank holding company with assets worth USD 10bn or more would be excluded from the Board's proposal for domestic banks, unless qualifying as a systemically important non-bank financial institution. This seems to constitute another breach of the principle of national treatment and equality of competitive opportunity, in this case relating to foreign-owned versus domestic broker-dealers / investment banking groups in the US market.

In this connection, we feel that the Board should seek to resolve any concerns regarding broker-dealer capital, which appear to be a strong motivation for the IHC-structure approach under its proposed rule, in coordination and consultation with the relevant functional US regulators (SEC, FINRA, CFTC) and the FSOC. By contrast, the Board should not one-sidedly and discriminatorily force FBO-owned broker-dealers under a bank holding regulatory structure in the form of the proposed IHC requirement.

To sum up, we would not regard US IHC and related US capital and liquidity requirements as being in line with the principle of national treatment and equality of competitive opportunity as enshrined in US and international law (US International Banking Act of 1978; WTO General Agreement on Trade in Services). The very provision which the Board's proposed rule is bound to implement directs the Board to give due regard to this principle (cf. Section 165(b) (2) DFA).

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[4] Cf. footnote 2.

3. The proposed rule would encourage the fragmentation of international banking regulation and global financial markets

It is difficult to reconcile the proposed rule with the Fed's long-standing policy of recognition of home-jurisdiction standards of non-US banks when overseeing their US activities. The new paradigm suggested by the proposed rule does not seem to adequately take into account comparable home-country requirements as called for by Section 165 of the Dodd-Frank Act and may easily cause disruptions in the global coordination of financial regulatory reform.

Implicit in the Fed proposal is a mistrust of (or, if one will, the seeds of a withdrawal from) international coordination of systemic risk regulation at the institutional level in terms of both prudential rules (for capital, liquidity, etc.) and resolution and recovery of internationally active banks. We are deeply concerned about the Fed's assumption of a lack of regulatory cooperation. We have asked German and European Union regulators to address this concern with the Fed, too.

Likewise, we are concerned about the Fed's assertion that there is a lack of information about foreign banks available to them. This seems to ignore not only the role of supervisory colleges and bilateral supervisory exchanges of information, but, first and foremost, the Fed's current use of its existing oversight powers to directly access ample information on FBOs' US and global operations. If the Board deems these arrangements to be insufficient, the right way forward seems to us to be seeking to enhance them in cooperation with relevant home-country regulators instead of changing the regime.

Instead of following the "every country for itself" approach implicit in the proposed rule, we urge the Board to reconsider its proposal with a view to supporting rather than inhibiting the process of stronger international regulatory and supervisory coordination and cooperation.

This process is well underway, as the G20 financial regulatory reform agenda and its implementation by the Financial Stability Board (FSB), the Basel Committee on Banking Supervision and other international standard-setting bodies as well as national regulators show. This goes not only for the Basel capital and liquidity standards, but also for standards on recovery and resolution, where, for example, the FSB has created the Key Attributes of Effective Resolution Regimes for Financial Institutions, a uniform set of standards for cross-border cooperation and coordination endorsed by the G20 leaders at the Cannes Summit in November 2011, and the EU as well as Germany have introduced strong legislation.[5] In addition, ongoing

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[5] Germany's Restructuring Act makes it well equipped to face future crises. Among other things, the act enables supervisors to intervene at an early stage if a bank seems to be getting into difficulties. And the restructuring fund financed by the banking industry will ensure that German taxpayers will not have to foot the bill for restructuring or winding up a bank in the future. We also support the European Commission's proposal to implement the FSB Key Attributes, and regard it as vital that the same rules apply throughout the EU.

work by the Basel Committee on large exposures could be mentioned here, which does not seem to be reflected in the proposed rule's single-counterparty limits.

It would be a fatal blow to this international reform agenda if the Board were to give such a strong signal to the contrary by implementing the proposed rule in its current form. Instead, the Fed should continue to support, and lead, this process, in cooperation with other relevant US regulators.[6]

The probability and impact of future bank failures should be minimized; however, it is important that there is agreement and harmonization at a global level to achieve an effective international framework in order to prevent competitive distortions, particularly in relation to structural issues, business models and bank funding.

The proposed rule's duplicative capital and – both within the IHC structure and for the US branch and agency networks of FBOs – liquidity provisions could have highly undesirable "beggar-thy-neighbor" effects, which would raise the cost of financing and destabilize financial systems, especially if other jurisdictions were to follow any US lead in this regard. First, in normal times, internationally active banks would have to hold, in aggregate, more capital and liquidity than under a consolidated home-country regulatory regime, in order to provide appropriate extra buffers above the various local requirements (for the US especially so, in view of the potentially hard triggers of the Section 166 early remediation framework as proposed to be implemented by the Board). Secondly, in times of stress, nationalistic approaches would make cross-border remediation measures within affected financial groups more difficult, or impossible, and thus impede their recovery efforts. Nationalistic approaches may also provide incentives to prematurely resolve internationally active groups, or parts of their activities, through an early triggering of resolution activities in one jurisdiction (again, the US early remediation triggers may play an unfortunate role here) without giving due regard to resources located elsewhere within the affected financial group or to possible support by its home-country authorities.

While we have not actively pleaded for reciprocal action with our regulators – i.e., subjecting US banks with EU operations to local capital and liquidity requirements similar to those proposed by the Fed for European banks in the US (e.g., for Germany withdrawing the regulatory relief for German branches of US banks provided under Section 53c of the German Banking Act described in footnote 2) – such reactions may well be caused if the proposed rule were to become final rulemaking, whether in Europe or elsewhere. The losers would be the economies in which international banks operate.

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[6] In this connection, we note that the FDIC and the Bank of England in December 2012 published a joint paper, "Resolving Globally Active, Systemically Important Financial Institutions". Such bilateral initiatives may foster international regulatory reform cooperation in addition to the work streams of the international standard-setting bodies.

4. Threat of dire economic consequences

If the largest, and hitherto open, financial market in the world massively raises regulatory costs of operation for foreign banks as we think the proposed rule would do, this may have significant negative effects on competition, cross-border financing and growth, in the US as well as elsewhere.

Firstly, an ensuing reduction of non-US banks' US banking and capital market activities, including the withdrawal by some of them from the world's largest and deepest financial market, would very likely reduce competitive pressure, worsen conditions (interest rates, fees, tenors, etc.) for, and reduce volumes of, capital and credit available to the US economy, US consumers and to the US public treasuries.

Second, the international standing of the US, and leading financial centres within the US such as New York, would be put in danger. Apart from the wider effects on the US economy mentioned above, the potential for employment and growth in the US financial sector would be curtailed by overly restrictive regulation of non-US banks.

Third, to compensate for any perceived discrimination of their banks in the US and / or inspired by the proposed rule's apparent short shrift to international regulatory cooperation, regulators in other jurisdictions may feel obliged to follow the US example of tighter regulation of foreign banks. Such a development could amplify and, indeed, multiply the negative economic consequences described above, by prompting their proliferation around the globe. It would also add to the negative impact on the US through the ensuing curtailing of US commercial and investment banks' international activities.

Please note that the internationally active German banks would be hit particularly hard by these potential economic consequences, since they very much need their international business to both diversify and increase their sources of income and are also requested by their national and international client base, in particular internationally active firms ranging from large multinationals to German Mittelstand champions, to offer their services around the globe.

With regard to financial stability, while it may be conceivable that international contagion links could be reduced by more restrictive host-country regulatory policies, an ensuing concentration of market shares in the hands of big national players would, in addition to the negative economic consequences mentioned above, work to the detriment of financial stability in the US and elsewhere.

We certainly would regard the broader economic cost and possibly destabilizing effects to be expected from an overly restrictive approach, as suggested for the US and other jurisdictions by the proposed rule example, as a strong argument in favour of a more measured approach to host-country regulation.

Thus, we would urge the Board to use its ample know-how and resources for a thorough analysis of the potential economic effects of the proposed rule, and its possible reverberations from other jurisdictions, on both the US and the global economy and on financial stability both in the US and elsewhere.

5. Implications of the proposed rule for the negotiations between the US and the EU to conclude a Transatlantic Trade and Investment Partnership

Please note that German and other European banks are keenly interested in the inclusion of financial services in the upcoming negotiations on a Transatlantic Trade and Investment Partnership (TTIP).[7] This is particularly the case, as several rulemaking proposals by US financial regulators in implementation of the Dodd-Frank Act, including the Board's proposed rule commented upon in this letter, have raised grave concerns at both official and private EU institutions, since they propose extraterritorial and / or not internationally pre-agreed and / or discriminatory rules for European banks.

We welcome the recent opening of negotiations on a Transatlantic Trade and Investment Partnership between the US and the EU. With multilateral WTO talks stalled, we no longer regard such bilateral negotiations as a threat to the Doha Round – they may even help to revive it.

Financial services should be included in any bilateral negotiations, if possible beyond binding current market access by, for example, encouraging mutual recognition of comparable standards, which should be pre-agreed at international level (BCBS, IOSCO). Of course, financial regulators (above all, the participants in the EU-US Financial Market Regulatory Dialogue [FMRD] like the US Treasury and the Board) would then have to be involved in such negotiations.

It is our firm conviction that, in order to avoid market fragmentation, the US and the EU must lead global regulatory coordination (G20, FSB, etc.) by example. Thus it seems essential to us that, in their implementation of the Dodd-Frank Act, US regulators recognise comparable home-jurisdiction rules for European banks and avoid application of US-specific rules especially where these are not pre-agreed at international level. Even when regarded under classical market access principles (national treatment – which has hitherto been standard in the US), some DFA

[7] These negotiations were announced in the 13 February 2013 statement by US President Barack Obama, European Council President Herman Van Rompuy and European Commission President José Manuel Barroso, cf. http://europa.eu/rapid/press-release_MEMO-13-94_en.htm#PR_metaPressRelease_bottom. The 11 February 2013 Final Report of the High-Level Working Group on Jobs and Growth asks for inclusion of services and their regulation in these negotiations, cf. http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf (see, e.g., p. 3).

rulemaking proposals, including the Board's proposed rule, threaten to discriminate against non-US banks in the US.[8]

The European banking and securities industry very probably would ask EU trade politicians to include any discriminatory features of final US financial regulation in the negotiations and not let market access commitments in banking and securities services be watered down by too unspecific prudential "carve-outs". Finalized US rulemakings perceived by the EU to violate the principles of national treatment and equality of competitive opportunity and recognition of home-country regulation could, therefore, well make a swift and successful conclusion of these negotiations with their significant positive economic effects on the US and EU economies more difficult.[9]

Also referring to the 13 February 2013 official statement that TTIP negotiations would be opened, EU Commissioner Barnier recently stated that "*a transatlantic financial market place requires a transatlantic regulatory alliance that is based on mutual trust, co-operation and full reliance between our respective authorities*".[10] We strongly support this statement and would recommend that its spirit guide a revised approach to the implementation of Sections 165 and 166 Dodd-Frank Act.

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[8] According to our analysis, a number of proposed DFA rulemakings would violate the "gold standard" market access principle of trade policy, i.e. national treatment:

- Swap desk push-out (legislative oversight in Sec. 716 DFA, Fed proposal pending): discrimination of uninsured branches of non-US banks;
- Unequal treatment of non-US vs. US funds and non-US vs. US sovereign securities under the Volker Rule proposal.

  In addition, several US proposals on Dodd-Frank implementation have an overly broad extraterritorial reach and thus would interfere with principles of international standard-setting and consolidated home-country regulation: the Volcker rule proposal and the cross-border guidance on US derivatives rules as proposed by the CFTC.

  The Board's proposed rule commented on in this letter would both discriminate against non-US banks and be at odds with concepts of international regulatory cooperation and consolidated home-country regulation.

[9] On behalf of the German Federal Ministry of Economics and Technology, the Munich-based Ifo Institute has conducted a study on the dimensions and impact of a transatlantic free trade agreement that would lift customs duties on goods and remove non-tariff trade barriers. The study finds that such an agreement would raise real income in EU member states by between 2.6% and 9.7% if sweeping liberalization were to occur. For Germany this figure would be 4.7%, while for the USA it may even be as high as 13.4%. Cf., for an English press release and summary, http://www.cesifo-group.de/ifoHome/presse/Pressemitteilungen/Pressemitteilungen-Archiv/2013/Q1/press-2013-02_28_freihandel.html.

[10] See EU Commissioner Barnier's speech "Why Global Markets Require Global Rules – and US-EU Cooperation", held in New York City on 15 February 2013 at http://europa.eu/rapid/press-release_SPEECH-13-125_en.htm. He also commented critically on the Board's proposed rule in this speech, as well as in his comment letter to Fed Chairman Bernanke dated April 18, 2013, cf. http://www.federalreserve.gov/SECRS/2013/April/20130422/R-1438/R-1438_041913_111076_515131431183_1.pdf.

III. Alternative approaches to implementing Sections 165 and 166 of the Dodd-Frank Act for FBOs

Instead of a nationalistic approach towards the US operations of foreign banks' capital, liquidity and other prudential standards, without regard to their home-country regulation, the Fed should, in line with the statutory language of Section 165 DFA, continue its long-standing approach of giving due regard to home-country rules of foreign banks first and should apply any additional measures only to address real systemic risks in the US caused on a case-by-case basis.

In this connection, we note that the Fed already has powerful supervisory tools to ensure that its regulated entities – including foreign banks operating in the US – operate in accordance with principles of safety and soundness.

Indeed, as stated in section II.3 above, it is our view that the Board's concern expressed in the Proposal regarding a lack of information about foreign banks seems to understate the existing oversight supervisory powers, which the Fed uses to demand large amounts of real-time data from FBOs (not confined to their U.S. operations), as well as the existing mechanisms of cooperation with relevant home-country regulators, including supervisory colleges and bilateral supervisory exchanges of information.

In any event, we feel that any such concerns can be better dealt with through international cooperation and effort (also on the subject of cross-border recovery and resolution), rather than through the approach put forward in the proposed rule.

The existing, and possibly in future even increased, access to information about FBOs' US and group operations through the above-mentioned channels (especially the Fed's already extensive use of its direct oversight powers in this regard), and the strength-of-support assessment (SOSA) used by the Fed currently would provide a much more flexible and appropriate basis for implementation of Section 165 DFA for FBOs than the approach taken in the proposed rule. Not least, it would also be much more conducive to international regulatory cooperation than the proposed rule's approach. SOSA would provide a framework for building a systemic risk assessment of FBOs and their respective home-country regimes, giving due regard to home-country heightened standards for SIFIs (including capital, liquidity, large exposure and recovery and resolution rules), which could be supplemented with additional scrutiny as required by any impact of a FBO on US systemic risk not reflected in such home-jurisdiction rules or the respective FBO's on-top precautions.

We can see no valid reason why foreign banks operating in the US that provide information through existing mechanisms to the Fed should be subjected to so much more burdensome and detrimental requirements, as foreseen under the proposed rule, than the host-country requirements for US banks operating in foreign markets (where there is no equivalent to the IHC requirement with its additional layers of capital and liquidity).

We would also ask that inter-regulator cooperation be sought whereby the Fed and relevant home-country regulators of FBOs reach an understanding about the willingness of the home-country regulator to permit support of the host-country operations, and on a satisfactory cross-border resolution regime. Meeting these conditions should make an IHC structure with related US capital and liquidity requirements dispensable (even if the Fed were to insist on retaining these intrusive requirements in principle).

Finally, if the IHC requirement were to be retained in some form, then, at any rate, the IHC requirement's threshold should be increased from USD 10bn to USD 50bn in US financial subsidiary assets, which, as argued above (cf. section II.1), we would regard as being more in line with the USD 50bn asset threshold in Section 165 DFA.

IV. Conclusion

There is a fine line between a hospitable and a hostile host-country regulatory environment. We fear that the Board's proposed rule unnecessarily errs too much on the side of the latter as to the legal requirements of Sections 165 and 166 DFA, which we support.

By contrast, an alternative approach as outlined above (cf. section III) would not only retain the US financial market place's attraction for foreign competitors to the benefit of US consumers, businesses and public finances, but would also avoid the proposed rule's strong incentives in favour of nationalistic solutions instead of international regulatory cooperation and locally fragmented, and thus more fragile and less efficient, banking and financial markets instead of global finance.

We respectfully urge the Board to carefully weigh up the arguments submitted in our comment letter, including those on the broader possible effects of the proposed rule on the US, EU and global financial markets and economies and global, EU and national banking regulation. Should you have any questions or require any further information, please do not hesitate to contact us (tel.:+49-30-1663-1110; e-mail: tobias.unkelbach@bdb.de).

Yours sincerely,

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