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April 29, 2013

Mr. Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, DC 20551

Re: Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Non-bank Financial Companies

Docket No. R-1438 RIN 7100 AD 86

Ladies and Gentlemen:

Deutsche Bank AG ("**Deutsche Bank**") appreciates the opportunity to provide comments to the Board of Governors of the Federal Reserve System (the "**Board**") on the Board's proposed Regulation YY provisions (the "**Proposal**") that would implement the enhanced prudential standards and early remediation standards established by Sections 165 and 166 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") for foreign banking organizations and foreign non-bank financial companies ("**FBOs**")[1].

As stated in our letter dated April 30, 2012[2], regarding Regulation YY's application to U.S. bank holding companies ("**BHC**") and U.S. non-bank financial companies supervised by the Board (the "**Domestic Proposal**"), Deutsche Bank supports regulatory efforts to enhance prudential standards that improve the safety and soundness of the U.S. financial system and minimize risk to the broader economy. We fundamentally disagree however, with the departure in the Proposal from the regulatory structure built upon international cooperation and comparability for multinational banks to a structure based upon national regulation.

However, even assuming that the Dodd-Frank Act incorporates a Congressional concern that the Board's Supervision and Regulation ("SR") Letter 01-01 was overly reliant on home country supervision, we do not believe that Congress intended to authorize or encourage the Board to abandon the existing supervisory practice in its entirety when proposing enhanced prudential standards for FBOs. Instead, Congress articulated in Sections 115 and 165 that the Board should give due regard to the principle of national treatment and equality of competitive

[1] See 77 Fed. Reg. 76632 (December 28, 2012).

[2] http://www.federalreserve.gov/SECRS/2012/May/20120509/R-1438/R-1438_043012_107226_633823940198_1.pdf

opportunity and should take into account the extent to which an FBO is subject on a consolidated basis to home country standards that are comparable to those imposed upon U.S. domestic BHCs. The Proposal does not take this approach, but instead adopts one which is designed to simplify supervision and resolution of an FBO's U.S. operations without regard to the broader systemic implications or the Congressional directive.

Furthermore, the Proposal's lack of consideration for parental strength and support and its corresponding disincentive for parental support of an FBO's U.S. operations, while conceptually increasing the resilience of the U.S. operations, will likely increase the potential for failure of an FBO under stress, and will not be conducive to overall financial stability. An FBO's failure, in turn, will increase the likelihood of failures of U.S. domestic BHCs and other FBOs. The daisy chain effect would create systemic harm to the U.S. financial system as well as lead to global financial instability.

Deutsche Bank believes that at a time when the regulatory community is moving towards consistent global standards and the objective of global resolution of financial institutions, the Proposal, if implemented as written, would constitute a significant move in the opposite direction. The Proposal, in its current form, would result in an increase in the instability of the financial system as a result of the deviation from cross-border cooperation and globally harmonized regulatory regimes, the creation of "silos" within a single banking organization, and the promotion of a higher concentration of risk in U.S. banks.[3]

Significant aspects of the Proposal are inconsistent with Congress's intent in passing the Dodd-Frank Act and do not advance the Board's mandate to ensure the resiliency of large financial institutions and promote financial stability and, as a result, should be fundamentally revised. Specifically, we note the following:

1. The Proposal's unilateral implementation of an approach for which no international agreement yet exists will reduce momentum for global regulatory cooperation;
2. The Proposal imposes an unnecessary intermediate holding company ("**IHC**") structure on FBOs, thereby creating an unlevel playing field with U.S. domestic banks; and
3. The Proposal has potential consequences that are inconsistent with the Board's mandate.

We respectfully submit that the Proposal is inconsistent with Congress' directive as to how Sections 165 and 166 should be applied to FBOS. Congress clearly intended that some version of Sections 165 and 166 requirements should apply to FBOs, but Congress also established guidelines for that application. Specifically, the FBO regulations must: **(A) give due regard to the principle of national treatment and equality of competitive opportunity; and (B) take into account the extent to which the foreign financial company is subject on a**

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[3] See Mary Miller, Under Secretary for Domestic Finance, U.S. Department of the Treasury, Testimony before the Senate Banking Committee (February 14, 2013), available at http://www.treasury.gov/press-center/press-releases/Pages/tg1854.aspx (noting that, "In particular, we must be careful to avoid a fragmentation in financial regulation internationally, which can lead to uneven regulation, unequal treatment, constrained capital flows, and increased uncertainty. Treasury will continue to work with our partners around the world to achieve global regulatory convergence.").

consolidated basis to home country standards that are comparable to those applied to financial companies in the United States."[4]

The Proposal is devoid of any consideration of the comparability of standards (clause (B)). Indeed, the fundamental approach of the Proposal – a single uniform standard for all banks from all countries – directly contravenes the Congressional directive, which requires a country-by-country analysis.

Furthermore, the Proposal is inconsistent with Section 165 as it actually discriminates against FBOs through the imposition of requirements on their U.S. operations which are not imposed upon domestic BHCs. Examples include: (a) the requirement for multiple liquidity buffers, (b) the imposition of multiple risk management structures, which limit an FBO's ability to manage its risks centrally, (c) the assumption that capital and liquidity outside of the U.S. will be available to domestic BHCs but not to FBOs, (d) the assumption that inter-affiliate obligations within a U.S. BHC will be available to meet liquidity needs, but not available in the case of FBOs, (e) the requirement for separate capital and liquidity at a subset of the overall operation, which is not imposed upon U.S. BHCs and (f) the application of default triggers to U.S. operations for events that are wholly unrelated to the U.S. operations of the FBO, as well as within the various parts of the U.S. operation (across the branch and IHC), while failing to give any effect whatsoever, in the positive sense, to the resources available or existing support from the parent to the U.S. operations of the FBO.

Deutsche Bank believes the suggestions set forth below will achieve Congress's objective, while still providing prudential standards for FBOs which will minimize the potential for systemic harm to the global and / or U.S. financial system. Deutsche Bank also generally supports the positions taken in the comment letters put forth by The Institute of International Bankers, The Clearing House, and The Institute of International Finance.

1. The Proposal's unilateral implementation of an approach for which no international agreement yet exists may reduce momentum for global regulatory cooperation

The assumed lack of cooperation and coordination among regulators will lead to unhealthy, fragmented, and nationalistic approaches.

Although we note the Board faces many challenges in the effort to achieve international regulatory harmonization and cooperation, we urge the Board to maintain its longstanding commitment to, and leadership of, international regulatory coordination. As the Board notes in the Proposal, considerable progress has been made toward international agreement on many important issues since the financial crisis, but work remains to be done. We fear that the Proposal may divert focus from this work and encourage other host jurisdictions to take similar unilateral actions. These actions could accelerate a growing trend not only towards balkanization generally, but also towards national approaches that differ by country and that may be inconsistent in important respects. If these trends are not reversed, financial stability will suffer.

[4] 12 U.S.C. Sec 5365(b)(2) (emphasis added).

Rather than impose rigid standards, the Board should increase its focus on inter-regulator cooperation so that the Board and home country regulators reach an understanding about the willingness of the home country regulator to permit an FBO to support its host country operations, and a satisfactory cross-border resolution regime, which can be translated into U.S. capital and liquidity requirements. As progress is made towards this goal, the Board should implement enhanced prudential standards through the supervisory process which could be amended to take into consideration similar practices enforced by home country regulators.

Furthermore, the Proposal is also inconsistent with the global approach to recovery and resolution planning put forth by the Financial Stability Board ("**FSB**") and endorsed by the G20. The Proposal's inherent assumption that there is a lack of international regulatory cooperation undermines current efforts directed towards group recovery and resolution plans.[5] This assumption also signals a complete departure from the Board's existing practice of assessing home country standards and relying on them when possible. This departure will disrupt coordination among global regulators and the establishment of harmonized global standards. The Proposal will, if adopted, also send a signal to the markets that the Board is not confident that the cross-border resolution efforts are capable of ending "too big to fail" risk. In attempting to create a U.S. stand-alone balance sheet, the Board is implicitly delivering the message that it has no confidence that a home country's resolution plan will be effective. The effect of this message, when combined with home country supervisory authority over the FBO itself, will be to create regulatory uncertainty and increased lack of clarity, with the likely consequence that an FBO would be less likely to support its U.S. operations and may in fact withdraw existing support. The result is likely to be significant economic dislocation, rather than financial stability.

We strongly believe that, instead of penalizing foreign banks for a presumed failure of effective regulatory cooperation, the Board should collaborate with home country regulators to reach an understanding about their willingness to permit support of host country operations and a satisfactory cross-border resolution regime. We recognize that certain foreign countries have recently indicated that they may not permit their major banks to support their foreign operations in times of serious financial stress. That approach will be encouraged by the Proposal, and any possibility for reversal will be lost. Furthermore, all FBOs should not be penalized because some foreign countries appear to be taking such a position. Instead, consistent with the Board's historical approach, measures should be taken in the supervisory process to address the risks posed by banks from such countries without penalizing FBOs which are not in a similar position.

Deutsche Bank disagrees with one of the Board's principal justifications for the Proposal: that it cannot access information about the activity of FBOs in the U.S. or their group operations. To the contrary, the Board receives comprehensive information about all aspects of our U.S. and global operations and extensive information about most FBOs. Moreover, over the course of the last two years the Federal Reserve's on-site supervisory teams at firms they regulate have significantly increased and will continue to have unfettered access to information and personnel. Indeed, the main thrust of this new supervisory model is to allow for the early identification of risks in

[5] Resolving Globally Active, Systemically Important, Financial Institutions, A joint paper by the Federal Deposit Insurance Corporation and the Bank of England, 10 December 2012.

order to prevent problems from occurring, which we believe to be the better approach than an imposition of rigid ex ante standards.[6]

Moreover, many FBOs are subject to consolidated home country standards that are comparable to those in the U.S., a fact which does not seem to have been given any consideration by the Board. The Board already has powerful tools at its disposal such as the Source of Strength Assessment ("**SOSA**") and Comprehensive Consolidated Supervision ("**CCS**"). These tools have historically involved an evaluation and assessment of home country standards, and continue to provide a platform for the Board to conduct individual as well as horizontal analysis and assessment of FBOs operating in the U.S. A complete revision of the basic regulatory structure is not warranted at this time.

The Proposal will lead to discriminatory regulatory treatment and operational inefficiencies, while increasing the potential for global financial instability

The Proposal, if adopted as written, would promote international inconsistency in the implementation of regulation. This could only result in increased operational burden through the adoption by other regulators of multiple, diverging methodologies and capital regimes, and in an unlevel playing field for both U.S. and non-U.S. banking organizations that operate in the global market. It is important that the Board take into account the cost imposed by unilateral policies which would likely result in the nationalization of global banking regulation. Indeed, at some point, it could encourage a "race to the bottom". The far preferable alternative would be for the Board to continue to pursue vigorously a multinational approach, which would enhance the safety and soundness of the U.S. and global financial systems.[7]

An FBO should generally be allowed to calculate its U.S. capital requirements under the Basel standards applicable in its home country, except to the extent that the Dodd-Frank Act specifically requires otherwise. Unlike U.S. domestic BHCs, which include their global capital in their consolidated U.S. Basel calculations, irrespective of where held, under the Proposal, the capital of an FBO's U.S. IHC will be evaluated independently from and without reliance upon that of its parent (and without considering any existing support that may be provided by the parent). Resources of the parent are virtually ignored (except in the case of penalties under the early remediation standards), which results in an unequal playing field. The Board's stated justification for requiring U.S. Basel calculations on an unconsolidated U.S.-only basis is its desire to evaluate all banking organizations operating in the U.S. on a consistent basis. As discussed more fully below, such a comparison would be superficial, but the inequality would be real.

[6] The Regulator Down the Hall, The Wall Street Journal, June 20, 2011,

http://online.wsj.com/article/SB10001424052702304763704576394610591065334.html#

[7] In a recent speech, Michel Barnier, of the European Commission, remarked that the Proposal is "moving away from cooperation with international partners – a cooperation which [he views] as absolutely necessary." See European Commissioner for Internal Market and Services, Why Global Markets Require Global Rules – and U.S.-U Cooperation, Speech delivered at the Transatlantic Finance Initiative (February 15, 2013).

The fundamental differences of the overall asset composition and risk profiles of U.S. BHCs (which have historically operated in the U.S. principally through banks) and FBOs that conduct the most significant proportion of their business in the U.S. through a Securities and Exchange Commission ("**SEC**") registered broker dealer make a meaningful comparison of the risk profiles of the two operations difficult, if not impossible. As such, the value of an IHC as establishing a common metric for comparison is brought into question.

A number of FBOs with large U.S. operations, including Deutsche Bank, conduct most of their business in the U.S. through one or more SEC registered broker dealer affiliates. These operations engage principally in transactions involving highly liquid securities, and thus face relatively greater market risk than banks, while banks, which engage in lending and other traditional banking transactions involving less liquid assets, generally face relatively greater credit and asset-based liquidity risks. These characteristics are reflected in the different approaches to capital adequacy under the SEC's net capital rule and the capital ratios applicable to banks. The net capital requirements generally treat illiquid assets harshly, regardless of their credit quality. Bank capital rules focus more on credit risk, recognizing that it is appropriate for banks to carry illiquid assets. This difference in treatment of low-risk, liquid assets, combined with the relative composition of the U.S. asset portfolios of FBOs, are key reasons why the imposition through the IHC of a U.S. bank regulatory capital ratio like the leverage ratio on a U.S. broker dealer which holds the principal part of the assets of an FBO's U.S. operations would be potentially punitive. The leverage ratio makes no adjustments for credit risk (counterparty or collateral) or the liquidity of a position, and the Proposal gives no credit for capital that may be held in entities outside the U.S. that could otherwise be used to offset the leverage capital requirement. As a result, while the risk-weighting of an asset may be low (thus attracting a minimal capital requirement), the imposition of a leverage ratio would result in a significant incremental capital requirement on an FBO.[8]

Moreover, the Board's desire to perform a "consistent" evaluation will require FBOs with IHCs to perform four sets of Basel calculations and to create at least two Basel systems; these will utilize different definitions and inputs, significantly increasing operational burdens and expenses on FBOs. This significant duplicative

[8] The following example illustrates these points. Assume that an FBO and a U.S. BHC have identical consolidated balance sheets and asset composition. Assume further that the FBO's U.S. broker-dealer subsidiary represents 80% of the assets of the FBO's U.S. IHC and 10% of the assets of the FBO as a whole, while a U.S. bank holding company's subsidiary U.S. broker-dealer represents 20% of the assets of the U.S. BHC as a whole. Assume still further a Federal Reserve leverage requirement of 5% and an SEC leverage requirement of 3%, and that every entity (parent and regulated subsidiary) maintains a 50 basis point cushion over all regulatory requirements. This would mean that the IHC holding the U.S. broker-dealer subsidiary of the FBO would need to increase its leverage ratio by 160 basis points (80% of the differential between 5.50% (5.00% plus the 0.50% cushion) and 3.50% (3.00% plus the 0.50% cushion)). In contrast, neither the U.S. broker-dealer subsidiary of the U.S. BHC, nor the BHC itself, would need to increase its capital. When the two institutions are compared, the FBO appears to be capital deficient. This is the case even though the overall risk profile of the two institutions is identical, the U.S. risk profile of the FBO in the U.S. is likely significantly lower and capital allocated to assets held outside the IHC could satisfy some of the deficiency. This results solely from the imposition of a leverage ratio to the FBO's U.S. operations ,the significantly smaller percentage of risk-weighted assets of the FBO in the United States and the Proposal's exclusion of capital resources held other than in the US operations from the IHC's capital base.

undertaking is not imposed on U.S. BHCs and would conflict with other reporting and control activities. This would not improve risk management, steer decision-making or lead to any demonstrable benefit to financial stability.[9]

2. The Proposal imposes an unnecessary IHC structure on FBOs

Structural requirements, funding constraints, and the intermediate application of leverage as a measure of risk unnecessarily penalize FBOs

As stated earlier, Deutsche Bank contends that it is difficult to reconcile the Proposal with the statute's requirements. The Dodd-Frank Act Section 165 (b)(2) states "In applying the standards set forth in paragraph (1) to any foreign non-bank financial company supervised by the Board of Governors or foreign-based bank holding company, the Board of Governors shall - (A) give due regard to the principle of national treatment and equality of competitive opportunity; and (B) take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States."[10] The Proposal does not take into account, to any extent (other than when a potential early remediation action is to be applied) the comparability of home country standards to those applied in the U.S. This leads to unequal treatment of FBOs.

We believe, as a general rule, that the Board should only make major changes in the longstanding approach to regulation of FBOs in two situations. The first is where the change is required by the terms of the Dodd-Frank Act, such as by Section 171. The second is where the Board determines that the change is clearly necessary. In the latter case, any change should be formulated to give due regard to the statutory requirements.

We submit that the IHC requirement, as proposed, does not meet this standard. The Dodd-Frank Act itself does not require this fundamental change in the regulatory structure for FBOs. The Proposal does not indicate why the IHC is clearly necessary. As an absolute rule, it disregards the statutory directive and will lead to potentially significant adverse consequences.

Deutsche Bank believes that by requiring a U.S. IHC structure, the Board is moving away from the progress that has been made towards risk-based regulatory standards. While we agree that systemically important entities and activities should be subject to some form of enhanced prudential standards, the Proposal casts too wide a net. Deutsche Bank believes that as an unanticipated consequence, hundreds, or potentially thousands, of entities with no operations would be included in a separately capitalized IHC structure with little, if any, resulting systemic benefit. Stated another way, it would require an FBO accept the significant burden of moving non-systemic entities under an IHC for no apparent supervisory reason.

[9] Please reference Deutsche Bank's response to the U.S. Basel III NPRs dated 22 October 2012. This response can be accessed at the following URL:http://federalreserve.gov/SECRS/2012/October/20121031/R-1442/R-1442_102212_110049_325348281401_1.pdf

[10] 12 U.S.C. Sec 5365(b)(2)

Lack of capital held at the U.S. operating subsidiaries of FBOs was not a source of stress during the last credit crisis. Deutsche Bank's regulated U.S. bank and broker dealer subsidiaries have always been managed and capitalized well above U.S. regulatory standards. As such, at an operating level, sufficient fixed capital already exists in our U.S. systemic operations. Including non-systemic subsidiaries that are already fully funded and directly supported by the FBO parent in the local capital requirement ignores that support and will result in duplicative capital requirements, which penalize FBOs versus their U.S. peers and does not add to the stability of the U.S. financial system.

Deutsche Bank does not believe that an IHC is mandated by the Dodd-Frank Act. However if the Board determines that an IHC is required, the IHC should be designed in a manner (including a virtual manner) that would limit its scope to truly systemic entities. We set forth below, and discuss in detail in our response to Question 10 in the Annex, a number of exclusions from an IHC requirement we believe should be considered to avoid unnecessary burdens or inappropriate results: (a) debt previously contracted subsidiaries, (b) funding vehicles, (c) subsidiaries that an FBO does not practically control (e.g., joint ventures, minority interests), (d) non-U.S. subsidiaries held through an ownership chain that includes one or more U.S. subsidiaries between the FBO parent and the non-U.S. subsidiary, (e) subsidiaries of an FBO's U.S. branches, (f) U.S. subsidiaries with full parental guarantees, and (g) merchant banking and other U.S. subsidiaries engaged in or holding non-financial assets.

As one example, many FBOs have existing tier 1 hybrid instruments that have been issued to the market. While the capital utility of these instruments phases out under Basel III, these instruments will continue to provide stable term funding to the FBO on a group-wide basis. The structure of these instruments typically includes a trust that issues preferred shares to the market and uses the proceeds to purchase debt of a Delaware LLC, which in turn uses the proceeds to purchase subordinated debt in the FBO parent entity. The Proposal would include such a Delaware LLC in the IHC and, as such, require the IHC to hold capital against the gross up in the IHC's balance sheet created by inclusion of the Delaware LLC. In addition, the subordinated debt that the Delaware LLC holds in the FBO parent would be risk weighted and would consume Core Tier 1 capital. We believe that legal entities used for this type of capital issuance should not be included in an IHC structure.

With respect to systemically significant operating entities, which comprise the vast majority of Deutsche Bank's U.S. balance sheet, requiring an IHC is also not appropriate, as such entities are currently, and have been, well capitalized under U.S. regulations. These operating entities already meet liquidity, capital and leverage requirements based on applicable U.S. requirements. Applying additional capital requirements at a consolidated U.S. IHC would be redundant and not provide additional protection or source of support to these systemic operating entities.

Moreover, we believe that the Proposal overemphasizes the intermediate application of leverage as a measure of risk, which is inconsistent with the approach agreed by the G20 in 2009 and has a significant discriminatory effect on many FBOs. Nationalized approaches to the leverage ratio create an unlevel playing field. One global Basel standard should be applied to all globally active banks. As discussed above, the IHC requirement puts FBOs at a competitive disadvantage compared to U.S. BHCs, as U.S. BHCs can rely on their entire group capital, wherever held, particularly to meet perceived deficiencies in the U.S. broker dealer (which bind considerable leverage-based capital but considerably less risk-based Tier 1 capital), while the Proposal would ignore the parent as a source of strength for its U.S. IHC. The Proposal further ignores the fact that FBOs will have to fully meet their home country Basel III standards and stress testing requirements, except when a potential penalty is to be applied.

The IHC requirement has additional potential discriminatory effects including non-systemic subsidiaries that are already fully funded and directly supported by the FBO parent in the local capital requirement ignores that support. This results in duplicative capital requirements which are not imposed on U.S. BHCs. In fact, the IHC capital and liquidity requirements will disadvantage FBO's global competitiveness (even in their home markets) in relation to U.S. domestic banks. For instance, the IHC requirement could conceivably lead to home country regulatory re-evaluation of an FBO's structure and questions as to whether capital is adequately distributed among members of the group, with potential adverse consequences to the FBO's operations globally, whether or not justified. This result, were it to occur, would clearly penalize an FBO, while leading to increased stress on the FBO. Notably, Deutsche Bank's systemic operating entities currently exceed the applicable U.S. statutory requirements. Perceived deficiencies in particular requirements are best addressed directly by the responsible regulatory agency, rather than by superimposing an arbitrary structure on the U.S. operations of an FBO to achieve the same result.[11]

Furthermore, the Proposal creates duplicative and inefficient funding and liquidity risk management structures at the U.S. legal entity level without any demonstrable benefit to U.S. financial stability. For example, liquidity buffers that are currently maintained for all USD risk in the Group would need to be held locally at the branch and the IHC to buffer local USD risk only. Given some degree of intercompany funding, additional USD liquidity buffers would also need to be held at the Group level. The sum of these buffers would certainly be larger than the liquidity buffers currently held. By creating artificial metrics for liquidity risk management – separate and apart from those promulgated by Basel III – the Proposal would increase pressure and costs on group-wide FBO funding and leverage. We urge the Board to consider this destabilizing effect. In fact, lessons learned from the recent credit crisis have already been incorporated into the liquidity risk management practices of FBOs. In particular, currency specific liquidity stress tests, which will also be specifically required at single currency levels under the Liquidity Coverage Ratio ("**LCR**"), will make material exposures at an individual currency level far more transparent and subject to management review. We urge the Board to give these measures time to achieve their intended effect.

As stated in our comments on the Domestic Proposal, Deutsche Bank submits that the Board should not prescribe the entities in which liquidity buffers are held, as long as those liquidity buffers are reasonably accessible and sufficient for use across all U.S. operations. Requiring separate and dedicated liquidity buffers at the IHC and

[11] See 12 U.S.C. 1844(c)(3)(A), which states that "the Board may not, by regulation, guideline, order, or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any functionally regulated subsidiary of a bank holding company that (i) is not a depository institution; and (ii) is in compliance with the applicable capital requirements of its Federal regulatory authority or State insurance authority." To the extent that the IHC requirement functionally imposes an increased capital requirement on FBOs with large U.S. broker dealers, it would violate 12 U.S.C. 1844(c)(3)(A) as well as create a regulatory competitive disparity.

branch would result in an extremely inefficient use of resources, as it could create the need to raise additional sources of liquidity to address concerns elsewhere within the FBO. This would be an inefficient, duplicative, and costly result. Requiring two separately held liquidity buffers equates to holding two buffers for the same risk, which is not balanced regulation.

Moreover, within an FBO, there is currently a capital buffer at every major subsidiary. That buffer is available not only to deal with unexpected losses at the subsidiary itself, but also with unexpected losses at other major subsidiaries. The Proposal's territorial approach, however, when combined with home country supervisory authority over the FBO itself, will significantly increase regulatory uncertainty and lack of clarity, with the likely consequence that an FBO would be less likely to support its U.S. operations and may in fact withdraw existing support. As a result, the risk to all U.S. subsidiaries is actually increased rather than reduced by the Proposal. Such a result will only weaken the FBO, thereby increasing its risk of failure.

3. The Proposal has potential unanticipated consequences that are inconsistent with the Board's mandate

Individually and collectively these unanticipated consequences can have adverse effects

Market Concentration: Diversification of market participants strengthens the markets and provides deeper and more sustainable credit and liquidity. Empirical evidence indicates that many financial markets rely on dealers or market makers for the provision of liquidity. Provisions in the Proposal, such as the IHC requirement, will incentivize, or perhaps even force, FBOs to reduce market activities and related assets in the U.S. leading to increased concentration in U.S. banking markets. This potential development would lead to concentration and corresponding fewer available sources of capital and liquidity. This will likely lead to reduced economic activity and the potential for financial instability, both of which are inconsistent with the Board's mandate.[12]

Independent Board Member: We acknowledge that in certain circumstances an independent board member can bring a heightened level of oversight to the work of a risk committee. Given the diversity of governance structures and home country requirements, however, we believe the Board should generally defer to home country judgments regarding the independence and experience necessary to carry out an FBO's risk management function, rather than imposing specific requirements for expertise or independence based on U.S. corporate governance and management traditions. In our judgment, the key attribute of effective risk oversight is independence from the business lines that are the subject of oversight rather than independence from the firm as a whole.

Not all FBOs come from jurisdictions with similar independence criteria for directors. Rather than focusing on an understanding of director independence grounded in U.S. public company concepts, the Board

[12] As an example, during the recent credit crisis as the number of U.S. primary dealers dropped to 18 from 22, the bid-ask spreads increased substantially, leading to the doubling of transaction costs to buy-side clients. This conclusion is based on information sourced from Bloomberg and http://www.newyorkfed.org/markets/pridealers_current.html

should accept that a board of directors supervised by a competent regulator has the ultimate oversight responsibility for all aspects of an FBO's business, including risk management, and instead focus on the independence of the risk management function. The key attribute of effective risk oversight is not necessarily independence from the firm as a whole, but rather independence from the business lines that are the subject of oversight.

Likewise, while we fully support the principle that an FBO's risk committee and risk management function must have an understanding of and experience in applying risk management practices and procedures appropriate to the size, mix and complexity of the FBO's operations, we encourage the Board to defer to home country judgments regarding whether an FBO has the appropriate expertise in key risk management roles. The Board should look to home country requirements and Basel principles to establish the necessary scope and level of expertise rather than impose potentially duplicative or inconsistent U.S.–specific requirements that could detract from effective enterprise-wide risk management.

Automatic Early Remediation: The Proposal requires the combined U.S. operations of an FBO be subject to early remediation triggers based on the FBO's and IHC's capital ratios relative to applicable minimum requirements, stress test results, liquidity and risk management weaknesses and market indicators. If the FBO or the IHC is unable to meet the applicable minimum requirements, various levels of early remediation would automatically be applied to the FBO's U.S. operations. Deutsche Bank believes that the Board should retain discretion, as a supervisory matter, to determine which actions a firm is required to take, rather than mandating the imposition of all of the potential remediation actions based upon the fixed requirement contained in the Proposal, many of which may not be warranted. This is particularly important here where, unlike U.S. BHCs, the remediation applies only to part of the FBO. Different types or severity of breaches should invite a tailored response. The Board should utilize its existing supervisory authority to progressively impose more severe remediation actions if they do not believe sufficient action is being taken.

Deutsche Bank believes that the proposed automatic implementation of certain early remediation triggers would not protect or stabilize an FBO's financial stability but instead could create a situation that could bring about the failure of the FBO's U.S. operations and, in certain circumstances, impact the viability of the FBO itself. The potential for an FBO's failure will increase the likelihood of knock-on failures of U.S. domestic BHCs and other FBOs which have exposure to the FBO. This daisy chain effect would certainly create systemic harm to the U.S. financial system, as well as, lead to global financial instability. This would seem to be the opposite result from that intended by the Dodd-Frank Act.

Single-*counterparty credit exposure limits ("***SCCL***")*: The Proposal imposes a two-tier SCCL for IHCs and the U.S. operations of FBOs: (i) a net credit exposure limit of 25% of consolidated capital stock and surplus to a single unaffiliated counterparty and (ii) a lower - as yet undefined - limit with respect to net credit exposures to a "Major Counterparty", defined as FBOs, IHCs, U.S. BHCs, and SIFIs with USD 500bn or more in assets. Consistent with our response to the Domestic Proposal, Deutsche Bank has grave concerns about the SCCL set forth in this Proposal. Five specific areas of concern are detailed below.

First, Deutsche Bank shares the views and concerns expressed by The Clearing House Association in their April 27, 2012 comment letter, and does not believe that any reduction in credit limits for major counterparties is appropriate until the results of a quantitative impact study is completed by the regulators. Without even an initial analysis of the application of the proposed SCCL to real-life circumstances, it is not possible to support the conclusion that a more restrictive limit for larger companies is necessary.

Second, a failure to exempt Central Counterparties ("CCP") and sovereigns, other than the U.S. and FBO's home country sovereign (including central banks), from credit limits would likely result in limit excesses with those particular counterparties. We believe exposures to non U.S. sovereigns that have liquidity and creditworthiness similar to that of the U.S. should be exempted from the SCCL.

With regard to CCPs, as detailed in our response to the Domestic Proposal, given the requirement in Title VII of the Dodd-Frank Act that derivative transactions be cleared through CCPs, the Board should implement an exemption from the SCCL for exposures to those parties. The need to exempt CCPs from the SCCL requirements is heightened because under Title VII of the Dodd-Frank Act clients will be allowed to choose the CCP at which they want their derivative transactions cleared, making it quite possible that a swap dealer's otherwise risk-balanced portfolio of derivatives could be split into multiple portfolios of unbalanced risks, which would create random and unpredictable amounts of credit exposure to individual CCPs.

Third, the U.S. operations of most FBOs will be separately subject to two SCCL calculations (one at the IHC and one at the combined U.S. operations). These multiple calculations and requirements would be burdensome and we question the beneficial use of the monitoring of these results for risk management purposes. Moreover, the Proposal contains a cross-trigger mechanism such that neither the IHC nor combined U.S. operations is permitted to increase counterparty exposure if either breaches the limit.

Fourth, the application of the Proposal's Current Exposure Method ("**CEM**") calculation methodology for derivative transactions would result in an overstatement of credit exposures in a manner that is disproportionate to the actual risks they pose, as the CEM is risk insensitive and overstates the economic exposures of derivative transactions. For example, the netting and posting provisions of the Proposal unfairly penalize the measurement of exposures which will likely result in the limited ability of FBOs to provide credit to the market.

Finally, the SCCL requirements of the Proposal fail to meet the Congressional mandate, set forth in Sections 115 and 165 of the Dodd-Frank Act, that the Board give due regard to national treatment and equality of competitive opportunity for FBOs. Pursuant to the SCCL requirements of the Proposal, an IHC is required to measure its credit exposure against its capital, while a U.S. BHC, including its non-bank subsidiaries, measures its credit exposure against its global consolidated capital. As such, an FBO with the same amount of global capital as a U.S. BHC will have a lower SCCL at the IHC as compared to the equivalent U.S. operation of the U.S. BHC. Imposing this requirement at the IHC level will hinder the IHC's ability to take on exposures that similarly situated and similarly sized U.S. bank and non-bank subsidiaries of U.S. BHCs would be permitted to take on. The Proposal's failure to credit the parent FBO's capital in calculating the IHC's SCCL will create a situation where two similarly sized U.S. entities (e.g., broker dealer, insurance company, etc.) that are subsidiaries of similar financial firms, one from the U.S. and another country, respectively would be treated differently merely because of their country of organization. Such a result clearly conflicts with the Dodd-Frank Act's mandate for national treatment of FBOs and would significantly impair the competitive posture of an FBO and its U.S. operations, as compared to its U.S. BHC competitors.

Recommendations

Given the issues and concerns noted in this letter and in the attached Annex, Deutsche Bank makes the following recommendations in an effort to provide constructive solutions:

1. Given the significance of this issue and the lack of concrete data on which to assess its effect, Deutsche Bank believes that, prior to taking any action, the Board should conduct a thorough QIS to determine the effects of the Proposal on the financial system, the liquidity of certain markets, and the broader economy. We strongly urge the Board to publish the results of the QIS for public comment before finalizing the Proposal.

2. The Proposal should be consistent with the Basel Accord's capital ratio calculations and implementation timeframes. Except to the extent explicitly required otherwise by the Dodd-Frank Act, the Board should allow FBOs to calculate their capital ratios (specifically the leverage ratio) at their parent, based on their home country standards. One standardized global leverage ratio is clearly more preferable than multiple, non-standard local ratios.

3. The Board's approach is inconsistent with, and may undermine successful implementation of, the single point of entry approach to recovery and resolution planning according to the Key Attributes of Effective Resolution Regimes for Financial Institutions, issued by the FSB. These same provisions were endorsed by the G20 in November 2011. Deutsche Bank recommends that the Board does not deviate from this harmonized approach

4. The Board has apparently significantly discounted the viability and effectiveness of global cooperation, and as a result, reverted to a form of nationalistic protectionism. We believe that the Board should reconsider this approach, as it has not allowed sufficient time for global cooperation to bear fruit. Rather than rushing to propose and implement an approach, the effects of which are not well understood and could have severe adverse long-run economic effects, the Board should spend time: (i) developing information sharing standards designed to allow access to information necessary to understand and evaluate the overall risks of an FBO, thereby addressing the Board's expressed concerns in this regard, (ii) analyzing and assessing the effectiveness of each relevant recovery and resolution framework (including particularly the home country framework), (iii) evaluating information developed in connection with the U.S. "living will" submissions and (iv) seeking agreement with other regulators on a framework for the global resolution of systemic banks through a global single point of entry rather than multiple points of entry. The goal should be to understand and evaluate the overall profile of each institution and provide for the effective recovery or resolution of distressed financial institutions; only by this means can the overall systemic effects be mitigated. History has amply demonstrated that protectionism, while superficially appealing, consistently fails, and should be avoided if at all possible.

5. As it is not required under the Dodd-Frank Act, the Board should eliminate the IHC requirement or, at a minimum, limit its application to truly systemically significant entities, such as those designated in the FBO's living will submission, and apply the proposed prudential standards to the IHC, on a phased-in basis, designed to coincide with the implementation of the Basel III Accord, except where the Dodd-Frank Act specifically requires otherwise. If some form of an IHC is ultimately required, the Board should permit an FBO's U.S. operations, other than those in a BHC or entities required to be included in the separately formed non-bank

IHC, to rely upon capital and liquidity resources at the parent FBO. Our response to Question 1 in the Annex outlines our recommendation in greater detail.

6. Deutsche Bank believes the entirety of the Proposal should be aligned with the Basel III glide path. Prior to Basel III implementation, the Board should only impose those requirements that it is statutorily bound to impose. Additionally, the Board has not provided clarity regarding the sequencing of other proposed rules that will have a significant impact on the application of this Proposal (e.g., transition period for Basel I to Basel III, stress and liquidity testing). The Board, except where statutorily required, should amend the Proposal to provide a minimum 36 month implementation timeline, with the ability for the FBO to seek an extension.

* * * * *

Deutsche Bank appreciates the opportunity to provide the Board with the foregoing comments and recommendations regarding the Proposal. Our detailed comments, suggestions, and responses to the Board's questions are included in the attached Annex, which forms an integral part of our submission.

Respectfully submitted,

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ANNEX to Deutsche Bank's Comment Letter Dated April 29, 2013

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I. The Assumed Lack of Cooperation and Coordination Among Regulators Will Lead to Unhealthy, Fragmented, and Nationalized Approaches

The Proposal assumes a lack of cooperation among regulators and inhibits efforts directed towards a global recovery and resolution plan for globally active systemic financial institutions, and signals a significant departure from the Board's past supervisory approach to FBOs.

Deutsche Bank believes that regulatory cooperation and harmonization are important to uphold. Non U.S. regulators are likely to follow the Board's lead; the most likely result will be to significantly reduce global liquidity and create other adverse effects on financial stability and the local and global economic conditions. The Board should coordinate and consult closely with the home country regulators to ensure greater harmonization of requirements and timing of implementation.

Similarly, cooperation between the Board and home country regulators should be sought to reach a mutual agreement that home country regulators will supply detailed plans for the support of host country operations and cross-border resolution regimes.

II. The Proposal Will Lead to Discriminatory Regulatory Treatment and Operational Inefficiencies, While Increasing the Potential for Global Financial Instability

Deutsche Bank currently meets the capital adequacy standards established by its home country supervisor and, anticipates it will meet the standards imposed under its home country implementation of the Basel III capital framework. Accordingly, our infrastructure reflects the supervisory requirements mandated by our home country regulator. The requirement to apply a separate and stand-alone U.S. version of Basel III would require changes across multiple risk and finance systems, and aggregation of the resulting data on a consolidated legal entity basis. At a minimum, FBOs with IHCs would be required to perform at least four Basel capital calculations, which would be a significantly duplicative undertaking, conflicting with other reporting and control activities, and would neither improve risk management, nor steer decision-making. The implementation burdens clearly exceed any capital benefits, particularly when home country capital is taken into account.[13] Equally significantly, the burden is not imposed upon U.S. BHCs.

Unlike their U.S. domestic peers, FBOs could be competitively disadvantaged by becoming subject, in the U.S., to multiple sets of parallel capital calculations. Implementation of the Proposal in its current form will

[13] Please reference Deutsche Bank's response to the U.S. Basel III NPRs dated 22 October 2012. This response can be accessed at the following URL:http://federalreserve.gov/SECRS/2012/October/20121031/R-1442/R-1442_102212_110049_325348281401_1.pdf

require reviews of, and modifications to, multiple existing systems and algorithms to ensure compliance with duplicative reporting.

Except to the extent statutorily required, the Board should be consistent with the Basel Accord's capital ratio calculations, including the dates on which the FBO's non-bank IHC, if established, is required to be in compliance with such ratios. It is essential to global financial stability that the globally approved Basel III reforms that increase the quality and quantity of bank capital are implemented consistently.

III. Structural Requirements, Funding Constraints, and the Intermediate Application of Leverage as a Measure of Risk Unnecessarily Penalize FBOs

Deutsche Bank believes that by requiring a U.S. IHC structure, the Board is moving away from the progress that has been made towards risk-based regulatory standards. While we agree that systemically important entities and activities should be subject to some form of enhanced prudential standards, the Proposal casts too wide a net. Deutsche Bank believes that numerous non-systemic entities would be included in a separately capitalized IHC structure for no valid reason.

The Proposal increases pressure on group-wide leverage for FBOs as multiple liquidity buffers will be duplicative and introduces unnecessary and anti-competitive costs to the FBO. Liquidity buffers should be permitted to be held centrally and in assets that are denominated in the appropriate currency addressing the liquidity risk of the FBO's operations on a global basis. Liquidity risk management needs to be conducted group-wide on a currency specific basis (rather than on a geographic basis), which is Deutsche Bank's current approach.

IV. Individually and Collectively These Unanticipated Consequences Can Have Adverse Effects

Market Concentration:

Diversification of market participants strengthens the markets and provides deeper and more sustainable credit and liquidity. For example, if FBOs were to pull back from U.S. securities and derivatives markets, either market liquidity would be greatly diminished or a handful of U.S. banks, all of which already are near the top of the global systemically important banks (**"G-SIB"**) list, would take up the slack, and thereby increase concentration and lead to increased costs, a lower level of economic activity and a greater threat to U.S. and global financial stability than would otherwise be the case.

Independent Board Member:

We acknowledge that in certain circumstances an independent board member can bring a heightened level of oversight to the work of a risk committee. However, we believe the Board should generally defer to home country judgments regarding the independence and experience necessary to carry out an FBO's risk management function, rather than imposing specific requirements for expertise or independence based on U.S. corporate governance and management traditions. In particular, rather than focusing on an understanding of director independence grounded in U.S. public company concepts, the Board should accept that a board of directors supervised by a competent regulator has the ultimate oversight responsibility for all aspects of an FBO's business, including risk management, and instead focus on the independence of the risk management function.

Automatic Early Remediation:

The Board should tailor automatic early remediation actions to the severity of the trigger breach and the availability of assistance from the FBO parent. The Proposal requires that the combined U.S. operations of an FBO be subject to automatic early remediation triggers based solely on fixed minimum requirements, which give no effect to the resources of the parent as a source of strength, but penalize the U.S. operations as for potential weaknesses at the parent. This is a severe and unnecessary approach that would put significant destabilizing pressure on the FBO in times of stress, exactly when additional flexibility would be called for. It would be more effective, and significantly less destabilizing, if remediation actions were structured to address individual breaches (and the degree of their severity) in the supervisory context.

Single-counter*party credit exposure limits ("***SCCL***")*:

SCCLs could greatly reduce credit intermediation and market liquidity. The SCCL provisions are extremely restrictive and not predicated on a quantitative impact study ("**QIS**"). To that end, we strongly support the Board's announced initiative to undertake a QIS of the SCCL provisions. Deutsche Bank shares the views and concerns expressed by The Clearing House in their April 27, 2012 comment letter which details the inherent weaknesses in the Board's approach. Likewise, we provide our detailed perspective in the attached Annex.

V. The Proposal Should Be Aligned with Global Basel Standards

As stated above, Deutsche Bank believes the Proposal should be aligned with the Basel III glide path which extends to 2019. The Board should only impose those requirements they are statutorily bound to impose. Since the requirements set forth in the Proposal diverge significantly from the Board's current practices, it is imperative the Board consider the magnitude of the system and operational changes that will need to occur as a result of the Proposal. This Proposal will require multiple underlying implementation programs (e.g., U.S. Basel III, creation of an IHC, stress testing, liquidity testing) that would need to be established and prioritized against other competing complex regulatory initiatives. As such, Deutsche Bank believes that the Proposal should be amended to provide a minimum 36 month implementation timeline, with the ability for the FBO to seek an extension from the Board.

* * * * *

Question 1: Should the Board require a foreign nonbank financial company supervised by the Board to establish a U.S. intermediate holding company? Why or why not? What activities, operations, or subsidiaries should the foreign nonbank financial company be required to conduct or hold under the U.S. intermediate holding company?

Deutsche Bank AG ("Deutsche Bank") does not believe that a U.S. Intermediate Holding Company ("IHC") is necessary, is required by Sections 165 and 166 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act"), or is consistent with the Board of Governors of the Federal Reserve System's (the "Board") mandate to insure resiliency of financial institutions operating in the United States and overall financial stability. We ask the Board to reconsider its proposal and tailor prudential standards to a foreign non-bank financial company ("FBO") after consideration of the factors below.

<u>Need for a Quantitative Impact Study ("QIS"):</u>
The Proposal evidences a fundamental change in the Board's leadership role and (as the Board itself acknowledges) its historical approach to regulation of foreign banking organizations operating in the United States. We believe that when the Board proposes to make a change of the nature contemplated by the Proposal (which we believe in many respects contravenes the Congressional directive) it is imperative that a thorough analysis be conducted to ensure that the consequences of the Proposal do not outweigh the intended benefits. As such, prior to finalizing the Proposal and/or requiring FBOs to establish an IHC, the Board should conduct a quantitative impact study ("QIS"), as recommended in our letter. The QIS needs to analyze and address, in detail, the benefits that would be derived from the Proposal against the cost associated with the Proposal, such as the effect of the Proposal on the cost of capital, the level of economic activity, job creation and loss and the effect on the U.S. and global economies of similar macro and micro economic consequences. Most significantly, the Board does not seem to have given any consideration to the effect of the Proposal on the behavior of regulators in other jurisdictions, particularly the effect on the global and local economy, as well as overall financial stability, if other regulators were to follow suit. We believe that, if history is any guide, the balkanization which the Proposal encourages could have significant adverse effects. For the QIS process to be truly effective, the Board needs to release the results to the public for review and comment.

<u>An IHC is not Mandated by and Contravenes the Dodd-Frank Act and Creates Discriminatory Cost on FBOS:</u>

The Board should not require FBOs to create an IHC for their U.S. operations (excluding their U.S. branches and agencies) for two reasons: (i) nowhere in the Dodd-Frank Act does Congress endorse the use of an IHC for the purposes set forth in the Proposal and (ii) doing so would be inconsistent with the Congressional mandate in section 165(b)(2), which requires the Board, when establishing enhanced prudential standards for FBOs, to (i) give due regard to the principle of national treatment and equality of competitive opportunity and (ii) take into account the extent to which the foreign financial company is subject on a consolidated basis to comparable home country standards.

A. IHC was not mandated by Congress

Deutsche Bank recognizes that the Dodd-Frank Act does authorize an IHC; however, the authorization, contained in section 167(b) and 627, is designed to permit the Board to require separation of financial and nonfinancial activities in companies that, unlike U.S. bank holding companies ("BHC"), are permitted to conduct both commercial and financial activities. As referenced above, Congress did not mandate, endorse or otherwise suggest the use of an IHC, particularly one that would result in a geographic separation of capital and liquidity for an FBO's U.S. operation as is prescribed in the Proposal.

B. IHC Requirement Does not Give Due Regard to Competitive Equality and National Treatment

It is the Board's view that the Board's decision to require an IHC is consistent with the Congressional mandate in that it imposes facially identical prudential standards on IHCs and U.S. BHCs. However, in our view, this requirement has significant discriminatory effects against FBOs operating in the United States. This is evidenced most directly by the fact that U.S. BHCs, although subject to virtually identical enhanced prudential standards, are regulated on the basis of global operations, the IHC would be regulated solely on the basis of its U.S. operations. This mode of regulation, although facially consistent, actually discriminates against FBOs by imposing requirements on them which are not imposed upon U.S. BHCs. Examples include: (a) the requirement for multiple liquidity buffers, (b) the imposition of multiple risk management structures, which limit an FBO's ability to manage its risks centrally, (c) the assumption that capital and liquidity outside of the U.S. will be available to U.S. BHCs, but not to FBOs, (d) the assumption that inter-affiliate obligations within a U.S. BHC will be available to meet liquidity needs, but not available to the U.S. operations of FBOs, (e) the requirement for separate capital and liquidity at multiple levels of the overall U.S. operation, which are not imposed upon U.S. BHCs and (f) the application of early remediation default triggers to U.S. operations for events that are wholly unrelated to the United States operations of the FBO, as well as within the various parts of the U.S. operation (across the U.S. branch and agency network and the IHC), while failing to give any effect whatsoever, in the positive sense, to the resources available from the parent to the U.S. operations of the FBO.

The above-mentioned disparities are merely those associated with the Proposal's requirement to form an IHC. Other discriminatory effects apply to, or will impact, the FBO itself including: (i) capital requirements, (ii) liquidity requirements, (iii) single counterparty credit limits ("SCCL"), (iv) stress testing and risk management requirements, and (v) early remediation provisions. These discriminatory provisions are discussed more fully below.

Capital: The requirement that the IHC be subject to capital requirements that are virtually identical to those of a U.S. BHC results in discriminatory treatment of FBOs, as it ignores capital resources available from the parent, except when an early remediation trigger is to be applied. This discriminatory effect is created as a result of the required formation of an IHC, in cases where a significant proportion of the FBO's U.S. operations, such as with Deutsche Bank, are conducted in a Securities and Exchange Commission ("SEC") registered broker-dealer. The assets of these broker-dealers typically consist of highly liquid assets with minimal credit risk, and, accordingly, minimal risk weightings, However, as a result of the imposition of the leverage requirement, these assets will require FBOs to infuse a significant amount of capital into their U.S. operations, with no ability to offset excess "leverage" capital held outside the United States (resulting primarily from capital held outside the United States by virtue of higher risk weighted assets being held in other jurisdictions).

The following example illustrates these points. Assume that an FBO and a U.S. BHC have identical consolidated balance sheets and asset composition. Assume further that the FBO's U.S. broker-dealer subsidiary represents 80% of the assets of the FBO's U.S. IHC and 10% of the assets of the FBO as a whole, while a U.S. bank holding company's subsidiary U.S. broker-dealer represents 20% of the assets of the U.S. BHC as a whole. Assume still further a Board leverage requirement of 5% and an SEC leverage requirement of 3%. Assume further that every entity maintains a 50 basis point cushion over all regulatory requirements. This would mean that the IHC holding the U.S. broker-dealer subsidiary of the FBO would need to increase its leverage ratio by 160 basis points (80% of the differential between 5.50% (5.00% plus the 0.50% cushion) and 3.50% (3.00% plus the 0.50% cushion)). In contrast, the U.S. broker-dealer subsidiary of the U.S. BHC, or its parent, would not need to increase its capital. When the two institutions are compared, the FBO appears to be capital deficient. This is the case even though the overall risk profile of the two institutions is identical, the U.S. risk profile of the FBO in the U.S. is likely significantly lower and capital allocated to assets held outside the IHC could satisfy some of the deficiency. This results solely from the imposition of a leverage ratio to the FBO's U.S. operations, the significantly smaller percentage of risk-weighted assets of the FBO in the United States and the Proposal's exclusion of capital resources held other than in the U.S. operations from the IHC's capital base. This results in an inefficient capital allocation, which is not imposed upon U.S. BHCs, and can only be compensated for by transferring risk to the U.S. operations, a result that can hardly be intended.

The premise for this treatment seems to be based upon the view that capital resources will not be available to be transferred to the U.S. in times of stress. However, this view is not applied to capital resources of a U.S. BHC held outside the United States, even though it is just as likely that any restriction would similarly apply. The result is nothing other than discriminatory.

We note that the Proposal requires IHCs to calculate their risk based capital requirements under U.S. capital standards in addition to their home country standards, which may have different definitions and methodologies, which could result in the IHC being subject directly or indirectly to up to four overlapping and at least partially redundant, sets of capital calculations. As a result, an FBO will be required to incur significant implementation and operational expenses which are not imposed upon U.S. BHCs. The Board has not given any indication that the benefit will equal the burden imposed by FBOs; we believe an analysis will demonstrate that any benefits would be immaterial.

Liquidity: The Proposal would require an FBO to maintain separate liquidity buffers for its U.S. branch network and its IHC, which would be required to be held principally in the United States, while U.S. BHCs would be subject to only one liquidity requirement for their global combined operations, irrespective of where the buffer is held. In addition, the Proposal would place significant limits on the ability of an FBO, but not on a U.S. BHC, to take account of intra-group funding flows, because an IHC would be required to hold a liquidity buffer against the IHC's short term internal obligations to its U.S. branch network, its parent bank and its other non-U.S. affiliates, while a U.S. BHC would not. Similarly, it would require an FBO's U.S. branch network to hold a liquidity buffer against the branch network's short term internal obligations to its affiliated IHC and its other non-U.S. affiliates and the non-U.S.

operations of its parent bank. By contrast, a U.S. BHC would be required to calculate only one liquidity buffer against all of its short term external obligations and could rely on global sources of liquidity to meet those obligations.

The premise for this treatment seems to be based upon the view that liquidity resources will not be available to be transferred to the U.S., or inter-affiliate obligations honored, in times of stress. However, this view is not applied to liquidity resources of a U.S. BHC held outside the United States, even though it is just as likely that any restriction would similarly apply. The result is nothing other than discriminatory.

Single Counterparty Credit Limits ("SCCL"): The Proposal's SCCLs, when combined with home country and other preexisting U.S. regulation of credit exposure to a single counterparty, would subject FBOs to multiple, overlapping and redundant credit exposure limits: (i) IHC–specific SCCLs based on IHC capital; (ii) SCCLs applied to the FBO's combined U.S. operations (including both its U.S. branches and its IHC) based on global consolidated capital; (iii) federal and/or state lending limits applicable to U.S. bank subsidiaries and branches; and (iv) home country credit exposure limits. U.S. BHCs would only be subject to global SCCLs based on their global consolidated capital and federal and/or state lending limits applicable to their bank subsidiaries.

In addition to these multiple overlapping and redundant credit exposure limits, an FBO's IHC will be treated less favorably than a U.S. BHC subject to the same SCCL, because SCCLs for an IHC would be set as a percentage of the IHC's capital (e.g., only the capital within the U.S. subsidiaries), while SCCL's for a U.S. BHC would be set as a percentage of the BHC's global consolidated capital. This disparity in treatment will cause the IHC to have a much lower exposure limit than a U.S. BHC that has U.S. operations that are equivalent in size to an IHC's U.S. operations. Furthermore, FBOs would be subject to a cross-trigger provision that would prevent lending by any part of an FBO's combined U.S. operations, including its U.S. branches, if the IHC's SCCL to a particular counterpart was breached, while a U.S. BHC would not be subject to such limitations based on the credit exposure of only subpart of the BHC's collective operations.

Stress Testing: Under the Proposal, FBOs would be required to run both (i) home country capital and liquidity stress tests at the global consolidated level and (ii) separate capital and liquidity stress tests for their IHCs pursuant to U.S. requirements. FBOs would also have a separate liquidity stress test for their U.S. branch network. U.S. BHCs would not be subject to similar requirements, as the domestic provisions of Regulation YY (the "Domestic Proposal") only require one set of capital and liquidity stress tests for a U.S. BHC's global operations.

Early Remediation: Under the Proposal, FBOs would be subject to early remediation cross-trigger provisions whereby, if either an FBO's IHC or its combined U.S. (or global) operations trips an early remediation trigger applicable to it, both the IHC and the FBO's combined U.S. operations would be subject to automatic early remediation measures—even if the triggering event is wholly attributable to the FBO's non U.S. branches and operations. (For instance if either the FBO's global operations or its IHC fails to meet a capital requirement, both would be subject to early remediation measures) U.S. BHCs would be subject to automatic early remediation triggers based solely on their global consolidated operations, and not based on the performance of any one part of the BHC's operations.

C. IHC Requirements do not Consider Comparable Home Country Standards that are Applicable to the FBO

The Proposal is further inconsistent with the directive of section 165(b)(2) in that it fails to take into account whether the FBO is subject on a consolidated basis to home country standards that are comparable to those imposed upon U.S. BHCs. Instead, the Proposal takes a one-size fits all approach by deconsolidating FBO supervision, without any apparent analysis or consideration of the adequacy of home country standards. Although the Board may prefer not to make this judgment, it is required to do so by the Dodd-Frank Act. The Board should not abdicate this responsibility, but instead should continue its historical practice of establishing the adequacy of an FBO's home country standards. For example, the Board determines whether a bank is subject to comprehensive consolidated supervision under the BHC Act and the International Banking Act as amended by the Foreign Bank Supervision Enhancement Act of 1991. The Board also issues bank–specific Source of Strength Assessment ("SOSA") ratings, which directly implicate not just the strength of the parent FBO but also its home country supervisory and regulatory regime. Given the Board's vast array of methods for determining if an FBO's home country consolidated supervision standards are comparable to the supervision standards of U.S. BHCs, the Board should only impose additional heightened supervisory standards on an FBO's U.S. operations where pockets of unaddressed risk can be determined.

D. Required Restructuring Imposes Discriminatory Costs

The Proposal's IHC requirement will also force an FBO to restructure its holding of U.S. subsidiary entities so that such entities are held under an IHC; such a requirement is not required for U.S. BHCs. The cost of this restructuring is not insignificant (particularly when considered with the Board's definition of "subsidiary" which requires a determination as to whether an FBO has a "controlling influence" over an investee) and is not a cost that would be applicable to a U.S. BHC. This cost is magnified significantly by the number of U.S. entities in which an FBO may hold an interest (which may be in the thousands) and the fact that, to the extent that other interests are held by unaffiliated entities, such transfers may require significant negotiations and third-party consents. In addition to these costs, there are also potentially significant tax costs, resulting from the tax gains and losses that the restructuring would require.

Certain of these costs are discussed in greater detail below.

Alternatives to Immediately Requiring an IHC

Instead of requiring an FBO to place its U.S. operations under an IHC, the Board should (i) require an FBO to establish a U.S. BHC (to the extent one does not exist) over its U.S. banking operations that would be subject to section 171 of the Dodd-Frank Act and (ii) rely upon the Board's current supervisory and living wills process to tailor specific enhanced prudential standards to manage risk and resolvability at the FBO's other U.S. operations. Additionally, the Board should attempt to (i) develop information sharing standards designed to allow access to the information necessary to understand and evaluate the overall risks of an FBO, (ii) develop with the other global regulators a set of global supervision standards for financial institutions that operate on a global basis, and (iii) agree with global regulators on a framework for the global resolution of systemic financial institutions through a single point of entry rather than multiple single points of entry. If the Board then nevertheless determines that an FBO's U.S. operations would present significant risk to the U.S. financial system, the Board could begin to evaluate the FBO to determine if an IHC would be required.

The factors the Board should consider in this evaluation include:(i) whether the FBO home country regulatory framework includes capital and liquidity requirements for the FBO that are similar to those required by the Board for U.S. BHCs on a consolidated basis, (ii) whether the FBO has a minimum SOSA rating of 2, (iii) whether the laws of the FBO's home country have a recovery and resolution regime similar to that required by the Board and the FDIC for U.S. BHCs, and (iv) whether the FBO's home country has publicly stated or the Board has other evidence that the home country would not support the FBO's U.S. operations in the event of financial distress at the FBO. If the Board determines, after this evaluation, that the FBO's U.S. operation pose a significant risk to U.S. financial stability that is not appropriately mitigated, the Board should require the FBO to establish a virtual systemic non-bank IHC ("Virtual Systemic Non-Bank IHC") over the FBO's systemic U.S. non-banking operations. The non-bank systemic entities that would be part of the Virtual Systemic Non-Bank IHC would be determined through the living wills process. The Board should then tailor the enhanced prudential standards that would apply to the Virtual Systemic Non-Bank IHC. In tailoring these requirements, the Board should give credit to the resources of the parent FBO as a source of strength.

If the Board determines that a Virtual Systemic Non-Bank IHC would not be effective to mitigate the risk imposed to U.S. financial stability imposed by the FBOs U.S. operations the Board should then require the FBO to designate or establish an IHC over its systemic U.S. non-bank entities (a "Systemic Non-Bank IHC"). The FBO Proposal's enhanced prudential standards would be determined and applied to the Systemic Non-Bank IHC, under the same process as that applied to the Virtual Systemic Non-Bank IHC. The application of these enhanced prudential standards should also include giving credit to the resources of the parent FBO as a source of strength.

If the Board nevertheless determines that these alternatives are insufficient to mitigate the systemic risk resulting from the FBO's U.S. operations, then the Board should require the FBO to create a virtual IHC ("Virtual IHC") over its entire U.S. operations, including the U.S. BHC. However, the Virtual IHC should exclude the following entities: (i) unconsolidated subsidiaries, (ii) subsidiaries controlled by a branch of the FBO, (iii) merchant banking investments, (iv) DPC subsidiaries, (v) funding vehicles, and (vi) similar types of non-systemic entities. The Virtual IHC would be subject to a set of enhanced prudential standards tailored in the same manner as that described above.

In each case, the enhanced prudential standards should be phased in on a timeline consistent with the Basel III timeline and would utilize home country Basel, for calculation purposes, except to the extent that the Dodd-Frank Act expressly requires otherwise. This approach would not only minimize the burden on FBOs, but would also give sufficient time to comply with the Proposal's requirements, time that is critical in light of the multiplicity of demands imposed by other, unrelated provisions of the Dodd-Frank Act to which an FBO is subject.

We believe that virtual application of enhanced prudential standards is not only achievable, but would significantly mitigate the discriminatory impact of the Proposal in its current form. A consolidating legal entity is not required to do the consolidated calculations that would be required by the Proposal; capital and liquidity could be held at those entities designated by the Board through the supervisory process, and remediation provisions could easily be applied virtually. Moreover, the approach described above would tailor the standards to the particular risk imposed by the FBO's systemic U.S. operations, take into account home country supervision, and reduce the costs needlessly imposed upon FBOs, all while ensuring the resiliency of the FBO and the stability of the U.S. financial system.

Question 2: If the Board required a foreign nonbank financial company supervised by the Board to form a U.S. intermediate holding company, how should the Board modify the manner in which the enhanced prudential standards and early remediation requirements would apply to the U.S. intermediate holding company, if at all? What specific characteristics of a foreign nonbank financial company should the Board consider when determining how to apply the enhanced prudential standards and the early remediation requirements to such a company?

The Board should take into account the statutory directive in the Dodd-Frank Act and modify the Proposal accordingly. See our response to Question 1 for additional detail.

Question 3: Does the proposal effectively promote the policy goals stated in this preamble and help mitigate the challenges with cross-border supervision discussed above? Do any aspects of the policy create undue burden for supervised institutions?

In addition to those concerns we have set forth in our previous responses, we believe that the policy does not appropriately promote the Board's goals for the following reasons:

- Although, the proposed rule enhances the risk and capital management of U.S. regulated banking and securities subsidiaries, it misses the risks to the U.S. financial system posed by USD operations conducted in non-U.S. branches and affiliates of an FBO. We believe that this does not effectively promote the policy goal of protecting the U.S. financial system.
- The proposed rule creates a disincentive to international regulatory cooperation by U.S. authorities and non-U.S. authorities as subsidiarization, once begun by a large jurisdiction like the U.S., will disadvantage those jurisdictions that do not implement it. This will do nothing other than encourage other jurisdictions to take similar actions resulting in a "balkanized" international financial system which will significantly increase the cost of capital, the availability of credit, and the level of employment and overall financial activity, a mandate of the Board's which does not seem to have been fully evaluated in the Proposal.
- The proposed rule increases pressure on group wide leverage for FBOs as multiple liquidity buffers will be duplicative and introduce unnecessary cost to the FBO.
- Instead, liquidity buffers should be held centrally and in assets that are denominated in the appropriate currency to address the liquidity risk of the FBO's global operations. These liquidity buffers need to be sufficient to cover the global liquidity risk posed by FBOs.
- The proposed rule would create an unlevel playing field with regard to the U.S. BHCs as the U.S. peers are able to hold liquidity buffers to cover the entire enterprise at the top holding company level and are not required to hold duplicative capital for their branches and subsidiaries.
- Subsidiarization will not cause home country regulators to permit full transparency into the FBO's overall operations to U.S. regulators. This goal is much better achieved through inter-regulatory cooperation and agreement.

- The Proposal will require FBOs to maintain duplicative and inconsistent risk systems, which utilize different definitions and somewhat different standards specifically, the need to maintain reporting systems for U.S. Basel I, U.S. Basel II, and home country Basel II.V/III.
- FBOs need to be able to implement a comprehensive risk strategy that addresses the risks posed by the entire enterprise. FBOs already have management and governance structures that define risk appetite at the group level and the allocation of that risk appetite needs to be a group wide decision that considers local regulations where appropriate. The creation of a U.S. risk committee with an independent member sets up potential distractions between the FBO's global risk strategy and local risk considerations.
- The proposed rule will require duplicative liquidity buffers at the U.S. bank and broker dealer subsidiary levels, at the IHC level and at the parent company level as U.S. securities regulators may require liquidity buffers to be held at the broker dealer subsidiary, particularly as a consequence of the Dodd-Frank Act directive to conduct broker-dealer stress testing. These duplicative buffers will consume balance sheet at the consolidated group level and at the IHC level resulting in a significant additional leverage capital requirement at both levels. Consumption of limited balance sheet resources and the corresponding need to maintain additional capital will have a direct negative impact on the ability of FBOs to extend credit within the U.S. financial system and the overall level of employment and economic activity.
- Requiring duplicative capital requirements on non-systemic FBO subsidiaries that do not issue third party liabilities and are entirely dependent on the FBO parent for funding and liquidity support, may result in facial comparability but does nothing to reduce the risk to the system posed by an FBO. Instead, the proposed rules will provide an additional incentive for FBOs to both transfer risk to the United States and conduct more USD denominated business offshore and possibly with less transparency to U.S. regulators. Duplicative capital and liquidity requirements will reduce the ability of U.S. regulators to gain global transparency from those FBOs that do not already provide full transparency. This "catch all" approach, which would include all U.S. domiciled subsidiaries irrespective of risk, does not enhance the safety and soundness of the U.S. financial system and will create duplicative capital and liquidity requirements on FBOs. The following examples illustrate this point:

    1. FBOs have existing tier 1 hybrid instruments that have been issued to the market. While the capital utility of these instruments phases out under Basel III, the funding provided by these instruments provides stable term funding to the group. The structure of these instruments includes a trust that issues preferred shares to the market and uses the proceeds to purchase debt of a Delaware LLC which in turn uses the proceeds to purchase subordinated debt in the FBO parent entity. This proposal would include the Delaware LLC in the IHC and as such require the IHC to hold capital against the gross up in the IHC's balance sheet created by inclusion of the Delaware LLC. In addition, the subordinated debt that the Delaware LLC holds in the FBO parent, would be risk weighed and as such consume core tier 1 capital. We believe that the inclusion of these vehicles in an IHC would artificially create risk and consume capital to no systemic end.

2. FBOs that have foreclosed on U.S. properties/assets through the U.S. branch of the FBO will typically hold these properties/assets in separate U.S. subsidiary to minimize liability to the FBO and facilitate disposal of the property/asset. The U.S. subsidiary is fully funded by the FBO parent through its U.S. branch or by the FBO head office. The proposed rule would include the U.S. subsidiary in the IHC and require an allocation of capital that is already allocated at the FBO parent level. Significantly, if the asset were held directly in the branch, the risk potential would be significantly increased, but the Proposal would not require additional capital. A similar conclusion applies to DPC subsidiaries held elsewhere.

3. FBOs operate financing subsidiaries in the U.S. to avoid tax nexus with multiple state tax jurisdictions at the group level. All of the funding required to support the operations of these subsidiaries is sourced from the FBO either from head office or via the U.S. branch. These assets would be held in the U.S. branch if the complexity of state tax treatments did not exist. As a result, the Proposal would impose prudential standards on these entities for no systemic reason.

- Deutsche Bank already provides the majority of the unsecured funding support for its U.S. subsidiaries. The additional capital that the proposal calls for is unnecessary and duplicative given this direct funding support from the parent. The additional regulatory capital need, if any, for the U.S. operations should be informed by the results of the FBO's U.S. resolution submission.
- Requiring an independent board member of the risk committee is unnecessary. While we acknowledge that in certain circumstances an independent board member can bring a heightened level of oversight and review to the work of a risk committee, we believe the Board should generally defer to home country judgments regarding the independence and experience necessary to carry out an FBO's risk management function, rather than imposing specific requirements for expertise or independence based on U.S. corporate governance and management traditions. In particular, rather than focusing on an understanding of director independence grounded in U.S. public company concepts, the Board should accept that a board of directors supervised by a competent regulator has the ultimate oversight responsibility for all aspects of an FBO's business, including risk management, and instead focus on the independence of the risk management function. In our judgment, the key attribute of effective risk oversight is independence from the business lines that are the subject of oversight rather than independence from the firm as a whole.

Question 4: What challenges are associated with the proposed phase-in schedule?

We believe, as discussed above, that the proposed schedule is not realistic in light of the other legislative and regulatory mandates to which FBOs are currently subject under other provisions of the Dodd-Frank Act, and for which rules have not been finalized, or in certain instances, proposed. These include, most significantly, the Volcker Rule, for which the effective date has passed without implementing regulations, and currently would require full compliance by July 2014, the requirement to calculate exposures under credit derivatives for purposes of Regulation W, Basel III implementation, the market risk and lending limit requirements, the swap push-out provisions under Section 716 of the Dodd-Frank Act and the CFTC reporting and record-keeping requirements for swap dealers.

Equally significant, it is likely that the final rules for both domestic institutions and FBOs will not be final until the end of 2013, at the earliest, allowing, in the best case scenario, only eighteen months for FBOs to restructure U.S. operations, form and capitalize an IHC, and reevaluate the activities of non-systemic subsidiaries to determine which activities should be transacted in the U.S. Branch or agency, discontinued, or transacted outside of the U.S. to efficiently allocate capital and liquidity and minimize duplicative requirements. In addition, compliance with the Proposal would require the development and testing of numerous additional systems, which cannot be reasonably developed prior to the promulgation of the final FBO rule. U.S. institutions are already organized as BHCs and will not require large scale changes in their legal entity and operational structures.

FBOs are operating under the expectation of a leverage ratio requirement under Basel III effective in 2018. Current business plans assume a glide path to this requirement. Acceleration of adoption of leverage limits will also not allow FBOs operating in the U.S. the use of internationally agreed time lines. Imposing limits on leverage ahead of 2018 will require that the current glide path be steepened to meet the U.S. requirement early, while increasing the pressure on leverage by requiring duplicative liquidity buffers.

Question 5: What other considerations should the Board address in developing any phase-in of the proposed requirements?

See our responses to Questions 1 and 4.

Question 6: What opportunities for regulatory arbitrage exist within the proposed framework, if any? What additional requirements should the Board consider applying to a U.S. branch and agency network to ensure that U.S. branch and agency networks do not receive favorable treatment under the enhanced prudential standards regime?

We do not believe that the Proposal raises these risks in any meaningful way and question whether it is appropriate to presume that the branch and agency network would receive favorable treatment under this proposal in light of its overall discriminatory potential.

Question 7: Should the Board consider an alternative asset threshold for purposes of identifying the companies required to form a U.S. intermediate holding company, and if so, what alternative threshold should be considered and why? What other methodologies for calculating a company's total U.S. assets would better serve the purposes of the proposal?

See our responses to Questions 1 and 10.

Question 8: Should the Board provide an exclusive list of exemptions to the intermediate holding company requirement or provide exceptions on a case-by-case basis?

We do not believe it is appropriate, or indeed possible, to provide an exhaustive list of exclusions, or appropriate to subject FBOs to the uncertainty of a case-by-case determination, particularly in light of the significant effort and expense that will be required in order to comply with the Proposal. We instead believe that the Board should apply the principles that we have outlined in our previous responses and limit the application of any IHC requirement to those entities that are truly systemically significant, but only after a determination that other less intrusive methods would not be effective to achieve the Board's stated goals in a manner consistent with the statutory mandate. See particularly our responses to Questions 1 and 10.

Question 9: Is the definition of U.S. subsidiary appropriate for purposes of determining which entities should be held under the U.S. intermediate holding company?

We believe, as discussed more fully below, that the definition of U.S. subsidiary should be limited to those entities which are consolidated with the parent FBO for reporting purposes. The definition as proposed, particularly the "controlling influence" test would impose a significant interpretive and compliance burden on FBOs. See our answers to Questions 1 and 10.

Question 10: Should the Board consider exempting any other categories of companies from the requirement to be held under the U.S. intermediate holding company, such as controlling investments in U.S. subsidiaries made by foreign investment vehicles that make a majority of their investments outside of the United States, and if so, which categories of companies?

As indicated in our previous responses, Deutsche Bank does not believe that an IHC is required and, if required, an IHC should be designed in a manner (including a virtual manner) that would limit its scope to truly systemic entities. However, we appreciate the Board's acknowledgement that the Board may need to retain flexibility to modify the IHC requirement to accommodate multiple IHCs or "alternative organizational structure[s]", while questioning the Board's belief that this flexibility should be infrequently exercised. Given the organizational and strategic diversity of FBOs, it is critical that the Board exercise flexibility to modify the requirements when the circumstances weigh in favor of such changes, so long as the Board's financial stability concerns under Section 165 are adequately addressed. In the event that the Board ultimately determines that the IHC is required, we set forth below a number of circumstances where we believe the IHC requirement should be adjusted to avoid unnecessary burdens or inappropriate results.

A. As a Default Rule, Only U.S. Subsidiaries that Would be Required to be Consolidated with the IHC under U.S. GAAP Should Be Required to Be Held under an IHC

The default rule should be that the IHC should consolidate only those U.S. legal entities that would be required to be consolidated with the IHC under U.S. GAAP if the relevant ownership interest were held by the IHC. This approach would result in the inclusion of those subsidiaries whose assets and liabilities would normally be consolidated with the IHC, including for purposes of compliance with U.S. regulatory capital requirements. The FBO should not, in contrast, be required to transfer to an IHC: minority investments, joint ventures, DPC subsidiaries, funding vehicles and other similar entities, nor to engage in the complicated legal and factual analysis that would be required by application of the Proposal's definition, as this would often involve numerous subjective judgments that could lead to significantly different results based upon the conclusions reached. Allowing the FBO to continue to own these interests directly or through a separate chain of ownership outside the IHC structure would be consistent with the Board's objective of protecting U.S. financial stability, because the relevant accounting, risk and regulatory capital consequences for the FBO associated with such interests are borne by the FBO outside the United States. In our view, there should be no reason to force such risk and consequences into the IHC structure.

Similarly, if an FBO owns a majority interest in a U.S. subsidiary indirectly and a minority interest directly, it should be sufficient if the FBO transfers the majority interest to the IHC, resulting in consolidation with the IHC, and retains the minority interest as a direct ownership interest outside the IHC.

B. The Board Should Grant Exemptions for Subsidiaries that an FBO does not Practically Control

The Board should not require FBOs to move under their IHCs: (i) joint ventures, minority interests and other "subsidiaries" over which an FBO has "control" under the BHC Act but lacks actual, practical control; and (ii) interests in such entities where the FBO is unable to force a transfer of its interest in the entity into the IHC, or where transfer into the IHC and consolidation for other purposes would be inappropriate. Recognizing that a categorical exclusion of such entities would require the development of a new regulatory standard for "BHC Act control but not practical control," we would instead suggest as an administrative matter that the Board establish a procedure for an FBO to demonstrate that a BHC Act subsidiary is not practically controlled by the FBO or could not be unilaterally transferred to the IHC (or otherwise could not be transferred without undue burden associated with the lack of practical control).

C. The Board Should Modify the *Definition of "Subsidiary" for Purposes of the IHC requirement* to Make it Clearer in Application

If the BHC Act definition of "subsidiary" is retained to define the perimeter of the IHC requirement in at least some cases, the Board should apply a simplified definition to avoid the fact–specific and often subjective judgments that are required under the BHC Act's "controlling influence" test. Specifically, the Board should limit "subsidiaries" for this purpose to companies in which an FBO directly or indirectly owns or controls 25% or more of a class of voting securities. This approach would be consistent with the modified definition of "subsidiary" in the Board's regulations implementing another, related provision of Section 165—the resolution plan requirement and is more consistent with the overall policy behind Section 165 (b)(2).

D. FBOs Should Have the Flexibility to Exclude Non–U.S. Subsidiaries Held Through U.S. Subsidiaries from Their IHCs

Some FBOs may hold certain non–U.S. subsidiaries through an ownership chain that includes one or more U.S. subsidiaries between the FBO parent and the non–U.S. subsidiary. Such ownership structures may arise for historical reasons—e.g., because of an acquisition by an FBO of a U.S. BHC or other U.S. company that had non–U.S. subsidiaries—or because other operational or business connections logically link the U.S. and foreign operations. Compelling an FBO to hold their non–U.S. operations under a U.S. IHC subject to local U.S. capital and liquidity requirements or to engage in potentially complicated and costly multi-jurisdictional legal restructurings to move these non–U.S. subsidiaries under a non–U.S. ownership chain would seem to be a punitive result for structures that had been established under the Board's prior regulatory framework for FBOs.

Non–U.S. subsidiaries held under an FBO's U.S. subsidiary, and the relevant U.S. subsidiary itself, should be excluded by rule from the IHC requirement so long as the U.S. subsidiary is a non–operating holding company. For other situations, such as when a U.S. operating company (such as an IDI, broker–dealer or asset manager) has non–U.S. subsidiaries, the Board should permit exclusions of the U.S. operating company and its non–U.S. subsidiaries from the IHC requirement on a case-by-case basis so long as the FBO can demonstrate that such an exclusion is consistent with the purpose of the IHC requirement. Alternatively, the Board could permit the IHC to disregard the non–U.S. subsidiaries for purposes of computing the capital, liquidity and other requirements applicable to the IHC.

E. *Subsidiaries of an FBO's U.S. Branches Should Be Treated as Part of the Branch and Remain* Outside of the IHC

The preamble to the Proposal confirms that the Proposal would not require an FBO "to transfer any assets associated with a U.S. branch" to the IHC. In some cases the assets of a branch will include shares of operating subsidiaries of the branch or similar interests held under authority of the relevant licensing regime of the branch. As assets of the branch network, the shares of operating subsidiaries or permissible minority investments of an FBO's branch should not be required to be moved into the IHC. Many branch subsidiaries are integral to the operations of the branch such that it would be both illogical and counterproductive to separate them from the branch itself (e.g., a limited liability company holding a DPC asset acquired in satisfaction of a loan made by the branch, a trust preferred securities or asset backed securities issuer, or a commercial paper conduit). The holding of these U.S. entities by a branch of the FBO does not pose risk to the U.S. operations of the FBO, because if a branch subsidiary becomes troubled, it would look first to the U.S. branch, and then the parent bank, rather than transmitting stress to other nonbank subsidiaries held outside of the U.S. branch network.

We recognize that the Board has historically taken the position that an operating subsidiary of an FBO branch is treated as a subsidiary of the FBO for purposes of the permissible activities limitations in Section 4 of the BHC Act. For that purpose, the fact that a subsidiary is held as an operating subsidiary of the branch is effectively disregarded in determining whether the activities of the subsidiary are permissible for the FBO (or require prior notice or approval, etc.). That treatment under the BHC Act would continue to apply if branch operating subsidiaries and minority interests are excluded from the IHC requirement. And in our view, the contexts are distinguishable, since the IHC requirement does not relate to permissibility of activities but rather relates, among other things, to ownership structure and regulatory capital requirements.

At the very least, existing branch operating subsidiaries and minority investments should be grandfathered, and new branch operating subsidiaries and minority investments should be presumed excluded, with the Board having the option to require movement of a branch operating subsidiary or minority investment into the IHC on a case-by-case basis through the supervisory process.

F. FBOs Should Be Permitted to Exclude U.S. Subsidiaries with Full Parental Guarantees

U.S. subsidiaries whose obligations are supported by full, unconditional guarantees from their parent bank are in much the same position as an FBO's U.S. branches. Although technically separate legal entities, these subsidiaries are inextricably tied to their parent bank by the guarantee, so that the default of a guaranteed subsidiary gives rise to the obligation of the parent. When a strongly capitalized FBO is willing to put its full and unconditional support behind one or more of its U.S. subsidiaries, the Board should permit the FBO to exclude those subsidiaries from its IHC and instead regulate them as if they were a part of the same legal entity as the parent bank.

G. Merchant Banking and Other U.S. Subsidiaries Engaged in or Holding Nonfinancial Assets Should be Excluded from the IHC Requirement

We support the Proposal's exclusion from the IHC requirement of subsidiaries held under authority of Section 2(h)(2) of the BHC Act. Such subsidiaries typically are not integrated into the financial activities that an FBO conducts in the United States and therefore are not required by the purpose of the IHC requirement to be transferred to the IHC. We believe that this principle should be applied more broadly to include other types of ownership interests that are similar in nature. These would include, at a minimum, subsidiaries held under the FBO's merchant banking authority and subsidiaries acquired in satisfaction of debts previously contracted in good faith. As in the case of 2(h)(2) subsidiaries, these types of subsidiaries typically are not integrated into the FBO's financial activities, and it would be unnecessary and—in our view—inappropriate to force FBOs to restructure their ownership interests in such companies to transfer them into an IHC.

Question 11:
What, if any, tax consequences, international or otherwise, could present challenges to a foreign banking organization seeking to (1) reorganize its U.S. subsidiaries under a U.S. intermediate holding company and (2) operate on an ongoing basis in the United States through a U.S. intermediate holding company that meets the corporate form requirements described in the proposal?

Significant U.S. and German tax implications may be imposed upon Deutsche Bank as a result of either changing the Deutsche Bank U.S. legal entity structure and/or the creation of a new IHC pursuant to the proposed FBO rules.

Potential U.S. federal, state, and local tax implications will arise upon either interposing a de novo U.S. IHC into the Deutsche Bank structure, or reorganizing under an existing entity in the most tax efficient manner. The impact of restructuring on deferred tax assets, net operating loss carry forwards, foreign tax credit carry forwards, and other significant tax attributes will need to be examined, as well as the potential impact on any deferred intercompany transactions. Entity-by-entity analysis regarding various tax attributes will be required. The extent of this analysis will depend on the portion of the several hundred entities currently included in the Deutsche Bank U.S. federal income tax return that will be impacted by a potential restructuring.

Moreover, the impact of each potential modification to Deutsche Bank's U.S. operations will require a separate analysis under German tax law. Given the significant differences between German and U.S. tax principles, the outcome of a particular transaction for U.S. tax purposes may be decidedly different under the German tax regime. Previous Deutsche Bank tax reorganizations in the U.S. have triggered the need for formal tax rulings from the German Ministry of Finance given the significance of appropriately assessing the potential German tax outcomes.

Although the proposed FBO rules provide flexibility regarding the legal form of the U.S. IHC (for example, limited liability companies may be used), which may be helpful in addressing potential U.S. and German tax structure concerns, the timeline for restructuring is likely to be unrealistic, particularly considering the magnitude and complexity of the analysis that will be required. Prior significant tax restructuring projects have been multi-year endeavors.

In addition, the Proposal's requirement to establish an IHC to act as the umbrella holding company for all U.S. subsidiaries (i.e., all "controlled" entities which are incorporated or organized under U.S. law) of an FBO could have potential adverse tax consequences of another sort. The European Commission has published a proposal for eleven member states, of which Germany is one, to adopt a Financial Transaction Tax (the "FTT"). The FTT must still be enacted by each of the eleven European Union member states once it has been finalized. As proposed, the FTT will be imposed upon all financial institutions, including branches of such institutions, who are parties to a transaction in stocks or securities, or who are parties to a derivative transaction, if one party to the transaction is located in the eleven EU member state FTT Zone, or if the subject of the transaction is a security issued within the eleven EU member state FTT Zone. It is likely that an IHC would be a financial institution for FTT purposes. The tax imposed is equal to 0.1% of the transaction value of any transfer of a share or security position, and 0.01% of the notional amount for derivative positions. It is currently proposed that the FTT will become effective as of January 1, 2014, and, in all events is expected to be effective by the end of 2014 at the latest. There is no general exemption to the tax for intragroup transfers of stock, securities or derivatives, although there is a limited exception for corporate restructuring operations. Restructuring operations include transfers of shares representing a majority of the voting rights in a company and transfers by a company of all of its assets and liabilities or one or more branches of activity, provided that the consideration paid by the acquiring company consists at least in part of shares issued by the acquiring company.

As the FTT has not yet been enacted into law in any of the eleven EU member states, and adjustments to certain provisions of the FTT may still be made – especially in light of the recent legal challenge made by the UK - it is not currently possible to predict the effect that the FTT will have generally, or in any particular instance. Consequently, it is uncertain whether, in any particular case, the formation of an IHC and transfers of stocks and securities or derivatives positions to the IHC would be subject to the tax. It is equally uncertain as to whether any such otherwise taxable transfers would qualify as a restructuring operation, as the ability to issue equity securities of the IHC in connection with the transfer will likely be dependent upon a number of factors which have not been, and cannot be, fully analyzed in the absence of an actual transaction. To the extent that (i) other transfers are required by virtue of an action required by the rule (for instance, transfers of derivatives positions and related hedges by a branch of Deutsche Bank AG), or (ii) that, post-restructuring in accordance with the rule, derivatives or securities trading and associated hedging have to be conducted in a different (and less FTT-efficient) way compared with pre-restructuring, the potential impact of the FTT could be significantly increased. As a result, it is not currently possible to quantify the potential impact on FBOs that are located in one of the eleven member states in the EU FTT Zone, as is Deutsche Bank AG, but the fact remains that the expense could, under certain circumstances, be significant, and would not have been imposed but for the requirement to form an IHC under the Proposal.

Question 12: What other costs would be associated with forming a U.S. intermediate holding company? Please be specific and describe accounting or other operating costs.

Significant costs (above and beyond the tax consequences detailed in the previous question and those discussed in our responses to the other questions) are anticipated with respect to the creation of a new IHC pursuant to the Proposal.

Evaluation of the rule, and institutional experience with significantly less complex internal restructurings, suggests that compliance will require the establishment of a global program to:

i. Perform a global legal entity review to identify and determine those entities required to be transferred to the IHC

ii. Conduct a change of control review for each entity requiring transfer into the IHC (detailing regulatory, customer, employment requirements, etc. to affect the transfer)

iii. Value the entities slated for transfer (in many cases requiring a formal external valuation opinion)

iv. Negotiate and document the transfer and obtain any necessary third-party consents

v. Execute the transfer (inclusive of regulatory, client, employment notifications / approvals and updates to internal technology systems and processes / procedures)

The complexity and cost of the above program cannot be estimated until the finalization of the proposed rules and the completion of the global legal entity review. However, preliminary analysis of the number of entities requiring detailed review, the global and manual nature of the effort, and the implementation time horizon indicates that additional staffing and technology expenditures will be required (inclusive of the redirection of staff from other infrastructure projects). In addition, significant external resources, including external counsel and valuation experts, will be required to complete a project of this magnitude and other, unanticipated, costs would likely be incurred as we move to the target U.S. IHC structure (i.e. impairment of goodwill, etc.).

In addition to the above, the Proposal will not be the only major regulatory requirement that must be addressed in the coming years. Most notably, major systems and process enhancements will be required to comply with the Volcker rule, single counterparty credit limits, capital & liquidity stress testing, and the overlapping capital regimes (i.e. German Basel III, U.S. Basel II/III reporting requirements, SEC capital standards, CFTC capital standards, etc.). These concurrent regulatory programs will compete for the same, limited, pool of subject matter experts across our support areas (i.e. Finance, Operations, Risk, Tax, Treasury, etc.) and increase the level of implementation complexity and risk due to the number of systems and processes requiring simultaneous enhancements.

Based on our initial assessment of the IHC creation requirements in conjunction with the other requirements of the Proposal, we estimate the cost of implementation will likely be upwards of nine figures. This cost will be further increased when accounting for the high cost of ongoing support and maintenance of these enhancements.

Question 13: What impediments in home country law exist that could prohibit or limit the formation of a single U.S. intermediate holding company?

Under German banking law and regulations, there is no impediment to setting up an IHC outside of Germany. German banking regulation also does not provide for a specific capitalization methodology for the non-German IHC. However, as discussed in our letter, the introduction of material stand-alone liquidity and capital requirements for an IHC could, under certain circumstances, trigger detrimental effects under German law. Deutsche Bank (the main bank for the Group and the ultimate holding company) is currently exempted from calculating its regulatory capital and observing large lending limits on a stand-alone entity basis, based, inter alia, upon the determination that it has the ability, subject to the relevant local regulatory framework, to freely transfer capital and liquidity within the members of the Deutsche Bank Group, as needed. If Deutsche Bank could no longer use this exemption, following for example a determination that capital and liquidity could no longer be freely transferred and/or the consolidated capital is inadequately distributed within the Group, Deutsche Bank would be required to calculate regulatory capital, and be subject to large exposure limits, on a stand-alone basis, in addition to a consolidated basis. These limitations on the permissible exposure of Deutsche Bank to its subsidiaries would significantly constrain the central refinancing of the Deutsche Bank Group, and could, under certain circumstances, require substantial external funding of the capital and liquidity needs of some subsidiaries. In addition, to the extent that any large exposure limitations are violated, certain of our existing obligations to third parties with respect to our affiliates would need to be terminated or modified. This would be particularly true for Deutsche Bank's U.S. operations and, as a result, Deutsche Bank's ability to fund and support its U.S. operations, including the IHC would be significantly restricted.

Question 14: Should the Board adopt an alternative process in addition to, or in lieu of, the post-notice procedure described above? For example, should the Board require a before-the-fact application? Why or why not?

In our view, to impose an application and other before the fact requirements would only add to an already difficult burden.

Question 15: Are there provisions in the Board's Basel 3 proposals that would be inappropriate to apply to U.S. intermediate holding companies?

Deutsche Bank has particular concerns about aspects of the Board's Basel III proposals.[14] These concerns focus on a common theme – the operational burdens imposed on FBOs subject to Basel requirements in their home jurisdiction and complying simultaneously with the Board's new proposed requirements to its U.S. operations.

> Deutsche Bank is concerned that there are already a number a material differences between the EU and U.S. proposals, not only with respect to implementation of the capital components and deduction regimes set forth in Basel III but also with respect to implementation of the risk weighting regimes set forth in Basel II and modified in Basel III. International consistency in the implementation of Basel III will reduce operational burden and result in a more level playing field for both U.S. and non-U.S. banking organizations that operate in the global market.
>
> Model validation is one specific area where the Board should bear in mind the substantial operational impact for FBOs in complying with multiple validation requirements. As a universal bank organized under the laws of the Federal Republic of Germany, Deutsche Bank is subject to supervision by the BaFin on a Group-wide basis, in addition to being subject to the proposed U.S. bank capital regime with respect to its U.S. operations.
>
> Although Deutsche Bank understands that implementation of certain proposed rules in the United States may require the Board to make some assessment of the models used by the U.S. operations of FBOs, we recommend the Board give due consideration to an FBOs internal models, methodologies, governance, and validation processes that are deemed satisfactory by the home country supervisors of those institutions.
>
> In our opinion, to the extent that home country supervisors' validation processes are broadly similar to U.S. requirements, the Board should be satisfied that home country supervisors have implemented an adequate regime for validating an FBO's internal systems. If such an adequate regime exists, the Board should seek to reduce overlapping validation requirements, which if implemented will impose significant operational costs on the U.S. operations of FBOs.

[14] Please see Deutsche Bank's response to the U.S. Basel 3 NPR's dated October 22, 2012. This response can be accessed at the following URL: http://federalreserve.gov/SECRS/2012/October/20121031/R-1442/R-1442_102212_110049_325348281401_1.pdf

Question 16: In what ways, if any should the Board consider modifying the requirements of the capital plan rule as it would apply to U.S. intermediate holding companies? For example, would the capital policy of a U.S. intermediate holding company of a foreign banking organization differ meaningfully from the capital policy of a U.S. bank holding company?

The proposed rule requires the application of the capital standards at the IHC level. This would create significant inefficiencies in the capital management of global FBOs and deplete global availability of this finite resource.

Deutsche Bank has a concern with the capital plan rule as proposed since it ignores the strength and support of the parent FBO. To be specific, the proposed stress testing and capital requirements contained in the Proposal do not consider capital support that would be provided to our U.S. operations under German law.

In our case, the German Banking Act addresses the responsibilities of Deutsche Bank to support its U.S. operations (including its IHC, if required) if such operations experience financial distress. Accordingly, we recommend that the Board take into consideration existing legal frameworks which require parental support of the U.S. IHC in times of financial stress.

Further to the actual stress testing and capital requirements, the Board should consider reducing foreign bank disclosure requirements at the U.S. IHC level given that this level of disclosure is significantly greater than that applicable to U.S. BHCs. An FBO's U.S. operations are often a subset of the FBO's overall global operations, whereas a domestic BHC represents, in many cases, almost the totality of operations. Proposed IHC disclosure requirements thus create an unlevel playing field disadvantaging IHCs relative to their U.S. peers.

Question 17: What challenges would foreign banking organizations face in complying with the proposed enhanced capital standards framework described above? What alternatives should the Board consider? Provide detailed descriptions for alternatives.

Provided that Deutsche Bank meets the capital adequacy standards established by its home country supervisor, it anticipates it will fulfill its home country implementation of the Basel III capital framework. Accordingly, the supervisory requirements mandated by our home country regulator are reflected in Deutsche Bank's infrastructure. However to the extent that the Proposal contemplates the implementation of the U.S. version of Basel III and does not take into account our home country regime it would result in the need to make numerous changes – some of them small, but others very substantial – to our capital calculation methodologies.

Taken individually, certain of the proposed changes may have a small impact from a regulatory capital or compliance perspective when compared with other aspects of the Proposal. However, implementing all of the proposed changes across multiple risk and finance systems, and aggregating the resulting data on a consolidated legal entity basis will be a significant undertaking. For example, Deutsche Bank and other similarly situated foreign banking organizations could become subject, in the United States, to four sets of parallel capital calculations – two required by their home country regulator (a German advanced approach and a required Basel I floor), the proposed U.S. Advanced Approach NPR, and the floor set by the proposed U.S. Standardized Approach NPR, the last of which differs substantially from the first three. As a result, implementation of the Proposal in its current form would require reviews of, and modifications to, multiple existing systems and algorithms to ensure compliance.

In addition to the general burdens of complying with multiple capital requirements, further examples of changes requiring modifications to existing systems include the changes required by the elimination of external ratings and changes in the definitions relating to securitizations. The extensive operational efforts required to comply with these new requirements, moreover, will likely not improve an FBO's overall resiliency, its risk management practices and culture or its ability to comply with other prudential standards in effect or to be implemented in the near term or otherwise mitigate its overall systemic risk. The Board should not underestimate the effects of substantial multiple demands on internal resources, particular for no purpose other than its convenience.

Similarly, certain provisions of the Proposal create conflicts with home country requirements, particularly when the remediation buffers are applied to the parent FBO. Specifically, one could interpret that the buffer provisions supersede the FBO's home country capital requirements for the FBO and by requiring buffers in advance of home country requirements would, in effect, accelerate the application of these requirements. This would be an inappropriate extra territorial approach that would likely have a direct effect on operations in jurisdictions outside of the mandate of U.S. regulators.

Question 18: What concerns, if any, are raised by the proposed requirement that a foreign banking organization calculate regulatory capital ratios in accordance with home country rules that are consistent with the Basel Accord, as amended from time to time? How might he Fed refine the proposed requirement to address those concerns?

The application of the Basel Accord, as amended from time to time, should not result in the application of a stricter regime applied to FBOs than the Board itself is applying to U.S. banks. The Board needs to be consistent with the Basel Accord's capital ratio calculations, including the dates by which an IHC would be required to be in compliance with such ratios. In sum, it is essential that the Basel III reforms that increase the quality and quantity of bank capital are implemented consistently.

Although the Proposal assumes the implementation of Basel III, there is a lack of harmonization versus global standards. The multitude of calculations increases complexity and potentially creates confusion for regulators, investors, depositors and other interested parties. Since the Proposal would apply both to the FBO's U.S. IHC and its combined U.S. operations, a "comparability" requirement should be applied that recognizes comity with other jurisdictions implementing Basel III. FBOs should be spared the burden of multiple reporting requirements.

In addition to the lack of harmonization created by the U.S.'s proposed Basel III standards and the requirement contemplated in the Proposal, it should be recognized that it does not appear that the Board conducted a cost / benefit analysis or any other quantitative analysis in connection with the Proposal. We believe that, given the scope, complexity, implementation timing, and departure from Global Basel III standards, such a study would help quantify the impact of the NPR. This impact assessment would help inform those provisions of the Proposal that should be refined.

Question 19: Should the Board require a foreign banking organization to meet the current minimum U.S. leverage ratio of 4 percent on a consolidated basis in advance of the 2018 implementation of the international leverage ratio? Why or why not?

The Board should not accelerate the implementation of the Basel Accord on FBOs operating globally. This could invite regulatory retaliation and invite actions designed to create an unlevel playing field by global regulators that could impose regimes beneficial or hostile to select groups of banks depending upon their location. In addition, requiring that an earlier deadline be met would significantly disrupt FBOs' current and ongoing preparations to meet internationally agreed timelines for implementation of this and other regulatory ratios.

Requiring a U.S. IHC to meet a domestic U.S. regulatory requirement for leverage would be a significant extra-territorial regulatory imposition, in that it would require the FBO to meet leverage requirements in advance of their implementation in the home country. The Basel Accord envisages the implementation of a regulatory leverage ratio requirement and establishes the timeframe for this. FBOs will be required to comply with the local enactment of the Basel accord and the Board should not seek to accelerate this.

The Board should ensure the U.S. leverage ratio calculation definitions and implementation timing are consistent with the Basel III standards. The Basel Committee on Banking Supervision ("BCBS") Basel III leverage ratio is based on month-end exposures whereas the Board's Basel III NPR proposes use of the daily or weekly average exposure. This difference would create incomparable results. The Board should adopt a consistent method to calculate the leverage ratio similar to that which the BCBS presented in its Basel III standards.

The U.S. and EU have taken different approaches on whether the leverage ratio should become a fixed Pillar 1 constraint. The U.S. is signaling that it is their intention to make it such and the EU is leaving this point open for consideration at a later date. For example, the current EU interpretation (Capital Requirements Directive IV, CRD4) of the Basel III leverage ratio requires reporting of the leverage ratio from 2015, with possible migration to Pillar 1 from 2018. By contrast, the Proposal requires compliance by 2015 as well as a higher 4% minimum leverage ratio. Deutsche Bank recommends the U.S. and EU work jointly to harmonize their leverage ratio approaches.

Question 20: Is the Board's approach to enhanced liquidity standards for foreign banking organizations with significant U.S. operations appropriate? Why or why not?

We agree that robust liquidity risk management practices are essential to the sound management of any financial organization. Incorporating an understanding of the vulnerabilities of short term wholesale funding into a liquidity risk management framework is likewise essential. We believe that liquidity risk management should be practiced by currency enterprise wide as the liquidity risk of a global financial institution is not limited to the activity transacted in U.S. branches and subsidiaries. As all USD settle in the U.S., the entire USD liquidity risk for the FBO global enterprise needs to be considered. Limiting the liquidity risk framework to the U.S. subsidiaries and branches misses a significant portion of that risk. The Basel III standards endeavor to address these risks in a consistent fashion across the industry. Those FBOs that are able to provide transparent global data by currency and have U.S. resolution plans that demonstrate an orderly resolution in the U.S., should be afforded the additional flexibility to hold USD liquidity buffers centrally and avoid holding duplicative liquidity in the IHC.

Question 21: Are there other approaches that would more effectively enhance liquidity standards for these companies? If so, provide detailed examples and explanations.

All financial institutions need to use the resources available efficiently. This includes balance sheet resources. Duplicative liquidity buffers attract a significant leverage capital requirement, which will reduce the capacity to provide credit and other services to the real economy. This effect is significantly magnified by the IHC requirement under the Proposal. A financial institution with a global presence will have risks in the currencies it transacts in globally. It is natural that the global liquidity risk for a specific currency will center in the jurisdiction of that currency (i.e. USD in the United States). Liquidity risk in USD needs to be managed on a group wide basis as the settlement of USD transactions booked by non-U.S. affiliates will occur in the U.S. in the U.S. affiliates for FBOs that are self clearing in the U.S. We agree that the USD buffer should be held in the U.S., but we believe strongly that this buffer needs to be held centrally (i.e. in the U.S. branch or other operating entities) and be made available to all members of the group as needed. Multiple buffers, when taken together with the leverage capital requirement can only result in a much smaller FBO presence in the United States and less credit and liquidity in the U.S. financial system.

Question 22: The Dodd-Frank Act contemplates additional enhanced prudential standards, including a limit on short-term debt. Should the Board adopt a short-term debt limit in addition to, or in place of, the Basel III liquidity requirements in the future? Why or why not?

A simple limit on short term funding is not meaningful as long as there is a robust liquidity stress test with appropriate assumptions around the availability of short term liquidity. In 2007, we found the short term funding markets less liquid than the long term capital markets while in 2011 we experienced a flight to quality in short term funding and, as a beneficiary, found it was important to our relationship with our clients that we not turn them away. In addition it made us more liquid in the longer run to take the funds at that time, even if we did not use these funds, instead leaving them as excess reserves at the Federal Reserve Bank of New York ("FRBNY").

We recognize that the Board is concerned about the inherent risks from Money Market Mutual Funds ("MMMF's") as these introduce liquidity risk to the market that could destabilize the banking system. If the liquidity stress tests used by FBOs treat maturing deposits from MMMF's and other wholesale unsecured funding counterparties with an assumption that 100 percent will not roll over, placing a limit on short term debt will not add to the resiliency of the FBO.

Our liquidity stress testing and that of most of our peers assumes 100 percent roll off of funding from MMMF's. As such, the short term funding provided by MMMF's is simply left at the FRBNY as excess reserves. Given this practice, limiting funding from MMMF's by means of a short-term debt limit would not add to the stability of the system.

Question 23: Should foreign banking organizations with a large U.S. presence be required to provide cash flow statements for all activities they conduct in U.S. dollars, whether or not through the U.S. operations? Why or why not?

We are generally supportive of a requirement of this nature for Deutsche Bank Group's principal activities; provided that those FBOs that provide global transparency in this manner should not be required to hold duplicative capital and liquidity buffers. We believe that evaluating the liquidity risk of the entire FBO enterprise is much more relevant than limiting consideration of this risk to entities within an FBO's U.S. operations, particularly in light of the fact that the USD cash flows of the FBO globally (including the U.S. operations) will ultimately settle in the United States, most likely in the U.S. Branch or U.S. chartered bank subsidiary of the FBO. Even if the FBO clears its cash through a correspondent banking relationship, the USD liquidity risk of the FBO's global operations will have an impact on the U.S. financial system. This makes enterprise-wide reporting more relevant than a simple regional view.

If an FBO provides this enterprise-wide cash flow reporting, then we feel that the enhanced transparency would permit the Board to provide for a more flexible liquidity requirement than that contained in the Proposal. In the event that enterprise-wide liquidity reporting demonstrates regional weaknesses, the Board could address this risk through the supervisory process. The final rules need to allow for a flexible liquidity risk management process so as to not unduly burden those FBOs that provide full transparency and are deemed to have appropriate risk management practices in place.

Question 24: What challenges will foreign banking organizations face in formulating and implementing liquidity stress testing described in the proposed rule?
What changes, if any, should be made to the proposed liquidity stress testing requirements (including the stress scenario requirements) to ensure that analyses of the stress testing will provide useful information for the management of a company's liquidity risk?

What alternatives to the proposed liquidity stress testing requirements, including the stress scenario requirements, should the Board consider?

What additional parameters for the liquidity stress tests should the Board consider defining?

The elements of liquidity stress testing as described in the Proposal are already widely used by both FBOs and U.S. domestic banking organizations. We believe that these requirements should ultimately harmonize with the Liquidity Coverage Ratio ("LCR") requirement under Basel III. The Board's Banking Supervision and Regulation staff has provided guidance on best practices in the industry as well as supervisory expectation and this guidance has been incorporated into Deutsche Bank's global liquidity stress testing methodologies. We do not disagree with the stress testing concepts that are presented in the proposed rule but we do disagree with the requirement to hold separate and segregated liquidity buffers at both the IHC and the U.S. branch level.

Deutsche Bank believes that liquidity stress scenarios and risk drivers need to be reviewed periodically and consider both historical events and plausible circumstances.

The Proposal ignores collateral that is pledged at the Discount Window other than U.S. Treasury and

Agency securities (for 30 day buffer). Investment grade corporate bonds, non-U.S. sovereign obligations and other assets that are eligible collateral for Discount Window purposes are ignored as valid liquidity mitigants for the first 30 days. The Proposal does not consider other liquidity assets such as investment grade corporate bonds and major market index equities with an appropriate haircut assuming that the assets included have observed liquidity in sufficient volume in the markets. This is not consistent with the definitions of liquid assets that can be held as part of the liquidity buffer under the Basel III LCR. We do not believe there is a valid reason for this discrepancy. Accordingly, we believe that the requirement should be harmonized. As such, Deutsche Bank believes that all Discount Window eligible collateral (with appropriate Board defined haircuts) should be considered in the first 30 days of the stress period as long as the FBO can demonstrate by means of its contingency funding plan that these assets are available to meet liquidity needs in all stress event.

Question 25: The Board requests feedback on the proposed approach to intragroup flows as well as the described alternatives. What are the advantages and disadvantages of the alternatives versus the treatment in the proposal? Are there additional alternative approaches to intracompany cash flows that the Board should consider? Provide detailed answers and supporting data where available.

As indicated previously, we believe that the Board's approach to intragroup flows is one of the main examples of the discriminatory effect of the Proposal. We also believe that the Board's approach is not good policy for the reasons described below:

Alternative (1): Assume that any cash flows expected to be received by U.S. operations from the head office or affiliates are received one day after the scheduled maturity date. This would help ensure that the U.S. operations receive any payments owed by affiliates before having to make payments to affiliates, thereby preventing intraday arbitrage of the proposed maturity matching requirement.

- The Proposal treats intercompany cash flows and sources of funding as inferior to third party cash flows, which is unrealistic as internal resources are more readily available than external sources of funding, particularly in times of stress. For example, the treatment of funds owed by non-U.S. affiliates to the U.S. operations as being received on a one day lag from the maturity date is simply not realistic, and can only serve to act as a penalty for no valid systemic reason. A one day lag in liquidity recognition has no basis in our industry experience.

Alternative (2): Allow the U.S. operations to net all intracompany cash flow needs and sources over the entire stress period, regardless of the maturities within the stress horizon, but apply a 50 percent haircut to all intracompany cash flow sources within the stress horizon. This approach could simplify the calculation and reduce compliance burden, but provides less incentive for foreign banking organizations to achieve maturity matches for their U.S. operations within the stress horizon.

- There is no basis for assuming a 50 percent haircut on cash flows from a related party. Requiring intercompany cash inflows to be subject to such a haircut would artificially inflate the need to hold liquidity buffers in the U.S. and place additional pressure on leverage at both the U.S. and global consolidated operations.

Alternative (3): Assume that all intracompany cash flow needs during the relevant stress period mature and roll-off at a 100 percent rate and that all intracompany cash flow sources within the relevant stress period are not received (that is, they could not be used to offset cash flow needs). This approach would simplify the calculation, but assumes that the parent would make none of its contractual payments to the U.S. subsidiary or U.S. branch and agency network may be an unreasonable assumption even under conservatively stressed scenarios. Alternatively, this approach could be used as a heightened standard that could be imposed if the Board has particular concerns about the ability or willingness of the parent company to serve as a source of strength.

- Assuming 100 percent roll off of affiliate borrowings is also inconsistent with practice and the commercial interests of an FBO. The term structure of internal liabilities is less important than the term structure of external liabilities.
- As noted above, true systemic risk management for FBOs as well as U.S. financial institutions needs to be executed at the enterprise wide level as the offshore risk is still a risk to the U.S. financial system.

The Proposal's assumption that the parent FBO would fail to provide liquidity to the U.S. operations under stress without penalty is unrealistic, in that it fails to take into account the market reaction that will ensue – the perception of the FBO's imminent failure – and the run that will inevitably occur. The approach is further fundamentally inconsistent with the operating model assumptions of universal banks which take this reaction into account, and assume that the failure of the U.S. operations would be viewed by the market as tantamount to the failure of the FBO itself. Universal banks hold themselves out to investors and counterparties as a single enterprise (which has resulted in rating agencies, for example, often giving certain subsidiaries the same rating as the parent). The operating model assumes that markets will be merciless in dealing with a parent that has allowed a subsidiary to fail, and that this reaction will ultimately lead to the failure of the FBO itself. As a result, there is very little potential that major subsidiaries or regions (such as an FBO's U.S. operations) would be sacrificed to protect the parent, at least if the FBO hopes to survive. The Proposal significantly understates this reality; if the concern is the ability of the FBO parent to fund upon failure, the Board should evaluate the FBO's resolution plan to determine if these concerns are valid and warrant additional protections to the U.S. financial system through the supervisory process.

Question 26: Should U.S. branch and agency networks be required to cover net internal stressed cash flow needs for days 15 to 30 of the required stress scenario within the United States?

As discussed in greater detail in our responses above, we do not believe that this aspect of the Proposal is required, as it does not meaningfully mitigate actual systemic risk. Our reasons for this belief are restated briefly below.

The currency of the liquidity buffer is more important than which entity it is held in. The buffer that covers days 15 to 30 will likely be held in U.S. Treasury and Agency securities or in U.S. Dollars. As such, these instruments will be held in the United States regardless of which legal entity they are held in as that is where settlement occurs. The delineation of the liquidity buffer between onshore and offshore buffers will only matter if the final rule is amended to include a broader range of assets, consistent with the Basel III Liquidity Coverage standards.

Question 27: The Board requests comment on all aspects of the proposed definitions of highly liquid assets and unencumbered. What, if any, other assets should be specifically listed in the definition of highly liquid assets? Why should these other assets be included? Are the criteria for identifying additional assets for inclusion in the definition of highly liquid assets appropriate? If not, how and why should the Board revise the criteria?

The Proposal does not automatically permit an FBO to count home country sovereign debt as highly liquid assets for purposes of the liquidity buffer[15], as would be the case under home country rules. By contrast, U.S. sovereign debt automatically qualifies as a highly liquid asset (even though it may have a lower credit rating that other sovereigns),[16] thereby potentially providing U.S. BHCs with an advantage relative to an FBO that may specialize in and hold an inventory of home country sovereign debt. Such a result would have a discriminatory effect on FBOs.

In addition, the Board should consider the definitions that were included in the January 7, 2013 final Basel III rules on the Liquidity Coverage Ratio. The FBO final rule should be consistent with internationally agreed standards.

Question 28: Should the Board require matching of liquidity risk and the liquidity buffer at the individual branch level rather than allowing the firm to consolidate across U.S. branch and agency networks? Why or why not?

As noted above, the overall liquidity risk of the FBO is most effectively managed enterprise wide. Liquidity risk is currency specific and allowing liquidity buffers in a currency that covers the entire enterprise allows for these buffers to be deployed where needed most efficiently. USD liquidity risk is present in the U.S. financial system regardless of which legal entity is transacting in USD, and will not be effectively mitigated by requiring U.S. entities to hold liquidity buffers within the U.S.

Question 29: Should U.S. intermediate holding companies be allowed to deposit cash portions of their liquidity buffer with affiliated branches or U.S. entities? Why or why not?

We believe that existing U.S. regulation is more than effective to mitigate the risk of any exposure to affiliates that may be posed by deposits maintained with affiliates. We do not believe additional restrictions are required for the reasons set forth below.

Section 23A of the Federal Reserve Act effectively prevents U.S. banks and their subsidiaries from placing funds with its affiliates, including the U.S. branch of the parent FBO. FINRA rule 10-57 governs the liquidity risk management of U.S. broker dealers and SEC net capital rules force U.S. broker dealers to deduct funds placed with any affiliate from regulatory capital.

[15] See 77 Fed. Reg. 76,682 (proposed 12 C.F.R. § 225.220).

[16] See id.

Question 30: In what circumstances should the cash portion of the liquidity buffer be permitted to be held in a currency other than U.S. dollars?

Currencies other than U.S. dollars should be eligible, provided that the currency has demonstrated liquidity in the FX swap markets and the FBO demonstrates to the Board that it has the capability under stress to transact in those markets.

Question 31: Should the Board provide more clarity around when the liquidity buffer would be allowed to be used to meet liquidity needs during times of stress? What standards would be appropriate for usage of the liquidity buffer?

There should be more clarity regarding when liquidity buffers could be accessed, and the consequences for doing so. Otherwise the liquidity buffers would become a false mitigant as maintaining liquidity buffers at a constant size during times of stress could be seen as a "signal" to the market given the rising cost of maintaining the buffer under stress. This perception would exacerbate the stress that is being experienced. The purpose of the buffer is to provide liquidity relief under stress. Lack of flexibility regarding permissible uses of the buffer renders the buffer useless and leaves a financial institution in the same position as if there was no buffer at all.

Question 32: Are there situations in which compliance with the proposed rule would hinder a foreign banking organization from employing appropriate liquidity risk management practices? Provide specific detail.

It is difficult to anticipate all of the situations in which the restrictions imposed by the Proposal could impede an FBO's ability to manage liquidity risk effectively. We posit that, rather than inquire as to whether there are situations that the Board has not anticipated in the Proposal that the Board carefully consider the benefits of the restrictions imposed by the Proposal and determine that there are specific identified risks that these restrictions will mitigate. It is our view that any restrictions are best imposed as part of the supervisory process, where specific risks, mitigants and consequences can be carefully considered and addressed. Notwithstanding our reservations as to our ability, or the ability of the Board, to conceive of all possible unintended consequences, and as to the efficacy of the Proposal's approach, we have the following observations:

- Holding entity specific liquidity buffers will hinder liquidity risk management, as unforeseen risks will likely only be mitigated by buffers held in the specific legal entity. This will result in increased use of balance sheet for FBOs enterprise wide which will limit the productive use of that balance sheet. As a result, FBOs will extend tenors to reduce the need to hold liquidity buffers in an effort to manage leverage.

- Increased costs will be passed on to clients in the form of higher fees and interest spreads creating an additional drag on the U.S. economy.

- Multiplying buffers and new limit structures will introduce the opportunity for observers to view, correctly or incorrectly, the signals that an institution under stress will send while it is attempting to stay in compliance with these rules. Without clear outlines of how these rules would be relaxed under stress, the U.S. regulator could create the sense of uncertainty that it is trying to reduce with the rules included in the Proposal.

Question 33: Should foreign banking organizations with a large U.S. presence be required to establish and maintain limits on other potential sources of liquidity risk in addition to the specific sources listed in the proposed rule? If so, identify these additional sources of liquidity risk.

We do not believe that it would be appropriate for the Proposal to limit other sources of liquidity risk as it would result in an inflexible approach to a multi-faceted problem. The better approach is the review and approval of liquidity risk practices and assumptions as part of the normal supervisory process. We believe that our existing risk management practices are more than sufficient to manage the liquidity risk resulting from our operations for the reasons set forth below.

- Already existing liquidity stress testing practices provide mitigating measures in the form of increased liquidity buffers and increased use of term funding. Instituting fixed limits would exacerbate the risk to the U.S. financial system during times of stress by limiting the available funding tools just when they, and flexibility generally, are needed most. Existing liquidity stress testing that includes measures of concentration risk already serve as a natural regulator. If the Board believes that stress testing practices are insufficient to address all types and sources of risk, this is easily addressed as part of the supervisory process.

- Deutsche Bank has already established liquidity risk limits which are meant to serve as early warning triggers for management. These limits should not be fixed, as they would preclude management from taking reasonable and necessary actions to remain funded during times of stress.

Question 34: The Board requests comment on all aspects of the proposed rule. Specifically, what aspects of the proposed rule present implementation challenges and why? What alternative approaches to liquidity risk management should the Board consider? Are the liquidity management requirements of this proposal too specific or too narrowly defined? If, so explain how. Responses should be detailed as to the nature and effect of these challenges and should address whether the Board should consider implementing transitional arrangements in the proposal to address these challenges.

The proposed rule attempts to reduce the risk in the system by addressing the activity of the U.S. branches and subsidiaries of FBOs. U.S. bank and dealer subsidiaries are already required to meet liquidity and capital requirements in the U.S. and FBOs, including Deutsche Bank, are required to meet and exceed these requirements or face supervisory action. The Proposal's insistence on discounting support from the parent and including the activities of entities which pose no systemic risk does not realistically address the overall risk to the system. The Board's approach further narrowly focuses on the "risks" imposed by the FBO's U.S. operations and ignores those of the FBO as a whole, which may, under certain circumstances, pose significantly greater risks to U.S. financial stability. An approach which acknowledges the need to regulate the enterprise wide risks of the FBO will necessarily accept the validity of the notion that home/host country regulatory cooperation is essential to controlling systemic risk effectively. The Board's approach, which focuses narrowly on U.S. risk is not, as history has amply demonstrated in numerous contexts, as effective as global cooperation.

FBOs that provide full transparency to cash flow and liquidity risk information at an enterprise wide level should be afforded additional flexibility with regard to at what level and where liquidity buffers need to be maintained. Liquidity risk management by currency on an enterprise wide level is more than sufficient to protect the U.S. financial system and does not place the additional pressures on leverage that have been discussed in earlier sections of this response.

Question 35: What challenges would a foreign banking organization face in implementing the requirement that all subsidiaries of the U.S. intermediate holding company and any part of the combined U.S. operations are subject to the proposed single counterparty credit limit?

Deutsche Bank generally supports the concept of SCCLs as a central component of risk management and for reducing systemic risk. However, given how the SCCL requirements of the Proposal are currently drafted, Deutsche Bank believes that there is the potential for a significant reduction in the flow of capital throughout the global markets (a consequence which was not fully examined in the Proposal). As such, Deutsche Bank believes the Board should conduct a QIS on the SCCL, as suggested by The Clearing House in their comment letter to the Board's domestic 165/6 proposed rule [17]. While the QIS on SCCL is being conducted, if the Board chooses to move forward with the Proposal (a plan that Deutsche Bank believes would not be the best course of action), the Board should delay finalizing any rules related to SCCL. Instead the Board should wait for the completion of the QIS on SCCL and re-propose new rules on the new proposal related to SCCLs for FBOs and seek comments on the new proposal.

Furthermore, Deutsche Bank believes the SCCL requirements also contain numerous other consequences and/or concerns. Some of the more prevalent consequences and/or concerns created by the SCCL requirements are listed below.

- Section 165 directs the Board to give effect to comparable home country standards. However, the Proposal does not consider comparable concentration and exposure limits an FBO is subject to under its home country laws. The Board should, as directed by Congress, determine whether home country supervisors have implemented an adequate regime for risk managing single counterparty risk concentrations and take these standards into account when implementing the Proposal.
- A failure to exempt Central Counter Party Clearing Houses ("CCPs") and sovereigns, other than the U.S. and FBO's home country sovereign (including central banks), from credit limits would likely drive limit excesses with those particular counterparties.

[17] Please see the Domestic Proposal comment letter submitted by The Clearing House dated April 27, 2012. The comment letter can be accessed at the following URL: http://www.federalreserve.gov/SECRS/2012/May/20120501/R-1438/R-1438_042712_107270_542775340448_1.pdf .

- The limits contained in the Proposal may restrict legitimate and economically desirable credit-related business, even where the risk has been otherwise sufficiently mitigated.
- The Proposal requires an IHC to aggregate credit exposures to counterparties and their subsidiaries. The Proposal defines "subsidiary" for this purpose to include, a company that is directly or indirectly controlled by another company, and a company controls another company if it: (i) owns, controls, or has the power to vote 25% or more of a class of voting securities of the company; (ii) owns or controls 25% or more of the total equity of the company; or (iii) consolidates the company for financial reporting purposes. The control standard raises major practical issues: First, publicly available information will not permit FBOs to determine whether an entity directly or indirectly holds 25% or more of a class of the voting shares or equity of another entity, particularly if the Board's definition of "class" and "voting" are applied. Second, an entity may make a minority investment in a company that exceeds 25% that does not provide rights to control a company. Deutsche Bank recommends that the definition of control include only companies that are consolidated for financial reporting purposes. To do otherwise will impose an unreasonable compliance burden on FBOs.
- The U.S. Operations of most FBOs will be separately subject to two SCCL calculations (one at the IHC and one at the combined U.S. Operations). These multiple calculations and requirements would be burdensome and we question the beneficial use of the monitoring of these results for our day to day risk management purposes.
- The Proposal contains a cross-trigger mechanism such that neither IHC nor combined U.S. Operations is permitted to increase counterparty exposure if either entity breaches the limit. In our opinion, when the breach is caused by an exposure at the IHC, this mechanism has the extra-territorial effect of limiting the activities of our branch which is an integral part of the FBO itself.
- The Proposal largely ignores existing systems and methodologies (developed over the years in conjunction with supervisors), including home country approved Internal Model Methodologies, that a FBO uses to monitor and measure credit exposures for regulatory capital purposes and internal risk management.

We believe that, at a minimum, the Board should allow FBOs an extended conformance period. We believe that a three year time frame extending to 2018 (or, if later, three years from the enactment of the final rule) that incrementally reaches the minimum single counterparty credit limit would be appropriate

Question 36: Because a foreign banking organization may have strong incentives to provide support in times of distress to certain U.S. based funds or vehicles that it sponsors or advises, the Board seeks comment on whether such funds or vehicles should be included as part of the U.S. intermediate holding company of the combined U.S. operations of the foreign banking organization for purposes of this rule.

We note that, as a general matter, that the Volcker Rule (Section 619 of the Dodd-Frank Act) as well as Regulation W may prohibit or otherwise regulate this form of support. As a result, we do not believe that including these vehicles in the IHC itself would serve any useful purpose and may actually lead to confusion as to whether the rule is intended to supersede the other restrictions. We have the following observations in those instances where support may be otherwise permissible.

Deutsche Bank does not believe it is necessary or appropriate to include sponsored or advised funds such as money market mutual funds (MMMFs) as part of the IHC in the absence of any legal financial support obligation. MMMFs are also subject to a regulatory framework that has increased the ability of these funds to sustain themselves during times of economic stress and reduce the risks of large redemptions. In particular, please refer to the Money Market Fund Reform rule issued February 23, 2010[18]. We do not believe that additional regulation would provide a meaningful incremental benefit.

The expectation of support to other types of mutual funds is weaker as the market generally views such funds as investment vehicles rather than alternatives to cash. In addition, private equity funds and similar investment vehicles are generally able to limit or postpone redemptions during times of stress; there is much less expectation of support from the market than in other cases. We would expect whatever expectation previously existed to decline significantly in light of the Volcker Rule prohibitions discussed above. Finally, including various investment vehicles managed by the FBO to determine its aggregate exposure would be overly broad and would result in a significantly overstated single counterparty credit exposures for the IHC particularly in light of the other legal restrictions referred to above.

Accordingly, absent express legal support obligations, Deutsche Bank recommends MMMFs and other pertinent funds and investment vehicles be excluded as part of the FBO's exposures. There is no valid reason to change the existing treatment for accounting, capital and liquidity purposes of U.S. based funds or other U.S. based vehicles that are sponsored or advised by the FBO.

Question 37: How should exposures to SPVs and their underlying assets and sponsors be treated? What other alternatives should the Board consider?

For the same reasons indicated in our response to Question 36, aggregation of exposures to SPV's and their underlying assets and sponsors should only be required where a legal obligation exists to support the entity financially.

As an alternative, the determination whether to look through the SPV to the issuer of the underlying assets or sponsor should be determined in accordance with the FBO's existing internal risk management policies. No look-through should be required if the FBO is not relying on the issuer or sponsor for repayment or if the income stream from the assets in the SPV is sufficient to satisfy outstanding obligations

[18] Please see The Money Market Fund Reform rule issued February 23, 2010. The rule can be accessed at the following URL: http://www.sec.gov/rules/final/2010/ic-29132fr.pdf

Question 38: Should the definition of "counterparty" differentiate between types of exposures to a foreign sovereign entity, including exposures to local governments? Should exposures to a company controlled by a foreign sovereign entity be included in the exposure to that foreign sovereign entity?

Deutsche Bank assumes that the question is asking whether it would be appropriate to differentiate between exposures to the sovereign and exposures to local government within the sovereign (i.e. U.S. sovereign and U.S. municipals) as opposed to differentiating between types of exposures to the sovereign (i.e. cash vs. derivatives). Assuming that to be the case, Deutsche Bank believes the definition of counterparty should differentiate between types of exposures to a foreign sovereign entity and exposures to local governments, so that they are not included as one entity for exposure purposes. Deutsche Bank also believes that a company controlled by a foreign sovereign entity should not be included in the exposure to that foreign sovereign entity. Leaving aside the numerous practical difficulties that we would face in making that determination, credit exposure is consolidated on a Group wide basis following the one obligor principle at Deutsche Bank. We believe that a similar practice is employed by our FBO peers. Under the one obligor principal, sovereign entities are, and need to be, differentiated from those counterparties within a sovereign hierarchy that are merely owned by the sovereign, in the absence of an explicit guaranty by the sovereign of the entity's obligations. We believe that, consistent with current practice, those entities whose activities could be carried out by privately owned companies in a profitable manner should not be considered sovereign entities, notwithstanding state ownership. Typical examples are government-owned corporates like oil companies, airlines, utilities and state-owned commercial banks, if they are not sovereign-guaranteed entities or policy banks. These counterparties require a full counterparty analysis and ratings. The analysis and rating takes into account the likelihood of sovereign support for the counterparty and consider the effects of possible privatization / government reforms leading to a withdrawal of external support. The final rule should not consolidate exposures to state-owned enterprises in the absence of an explicit sovereign guaranty.

Question 39: What additional credit exposures to foreign sovereign entities should be exempted from the limitations of the proposed rule?

We interpret this question as seeking views on what exposures to other sovereigns should be exempted by the Proposal. In our view, in the case of EU countries, a qualified subset of EU sovereigns should be exempted. The premise of this stance is based on the fact that the ECB accepts obligations of this broader group as credit worthy collateral. The SCCL section of the Proposal, would exempt exposures to the U.S. government and home country sovereign; however, no basis is provided for not exempting exposures to non-U.S. sovereigns that have liquidity and creditworthiness similar to that of the U.S. This creates an unlevel playing field.

Moreover, under the Global Basel III liquidity provisions, marketable securities (which include claims on or claims guaranteed by sovereigns) are included in the definition of highly liquid assets. The SCCL portion of the Proposal may have the effect of restricting the acceptance of high-quality obligations issued by non-U.S. governments as collateral. The ability of firms to transact with a number of creditworthy countries with stable economies will be limited by the SCCL portion of the Proposal. This will negatively impact firms with substantial non-U.S. operations.

Given the foregoing, Deutsche Bank believes the Board should expand the scope of the exemption to include other global, credit worthy sovereign issuers where FBOs may have significant banking operations, including, for instance, a central role in market making in local sovereign debt.

Question 40: What other alternatives to the proposed definitions of capital stock and surplus should the Board consider?

To the extent the Board retains the cross trigger mechanism of the SCCL, the Board should use the FBO's global capital stock and surplus for purposes of calculating the exposure limits applicable to the IHC and U.S. branches of FBOs. If the Board does not allow for the use of the FBO's global capital stock and surplus for calculating an IHC's SCCL, the FBO will be severely disadvantaged as compared to a U.S. BHC whose U.S. operations are the same size as an FBO's IHC. As described in our discussion of the SCCL in Question 1, the failure to base the limit on an FBO's global capital and stock has a significant discriminatory effect.

Question 41: Should the Board adopt a more nuanced approach, like the BCBS approach, in determining which foreign banking organizations and U.S. intermediate holding companies would be treated as major foreign banking organizations or major U.S. intermediate holding companies or which counterparties should be considered major counterparties?

Deutsche Bank shares the views and concerns expressed by The Clearing House in their April 27, 2012 comment letter on the Domestic Proposal[19] and does not believe that any reduction in credit limits for major counterparties is appropriate until the quantitative impact study is completed by the regulators. Without an initial analysis of the application of the proposed SCCL Rules to real-life circumstances, it is not possible to support the conclusion that a more restrictive limit for larger companies is necessary.

Question 42: Should the Board introduce more granular categories of foreign banking organizations or U.S. intermediate holding companies to determine the appropriate credit exposure limit? If so, how could such granularity best be accomplished?

As discussed in our response to question 41, Deutsche Bank does not believe that introducing more granular categories of foreign banking organizations or U.S. Intermediate Holding Companies to determine the appropriate credit exposure limit is appropriate until there has been a thorough quantitative impact study that demonstrates that such granularity would meaningfully mitigate systemic risk without causing a negative impact on the economy generally.

[19] Please see the Domestic Proposal comment letter submitted by The Clearing House dated April 27, 2012. The comment letter can be accessed at the following URL: http://www.federalreserve.gov/SECRS/2012/May/20120501/R-1438/R-1438_042712_107270_542775340448_1.pdf .

Question 43: The Board seeks comment on all aspects of the valuation methodologies included in the proposed rule.

Current Exposure Method

We concur with the view expressed in The Clearing House April 27, 2012 comment letter [20] that the proposed calculation methodology for derivative transactions results in a gross overstatement of the exposure in relation to the risk posed by such transactions. Section 252.94 of the Proposal requires that the exposure to a counterparty under a derivatives contract entered into pursuant to a qualifying master netting agreement be measured using the method provided in 12 C.F.R. Part 225, Appx. G, Sec. 32(c)(6), which is generally referred to as the "current exposure method" (CEM). CEM is a misnomer because it includes an artificial future exposure as well as actual current exposure. The limitations of CEM are readily apparent. Overall, CEM's flaws lie in its risk insensitivity, which results in an overstatement of the realistic economic exposure of derivative transactions. In particular, counterparty credit exposure under CEM is calculated as net current exposure plus potential future exposure, and the overstatement is driven mostly by the calculation of potential future exposure. Under CEM, the potential future exposure calculation significantly limits the degree to which netting may be taken into account, even though the transactions are subject to a qualifying master netting agreement. In addition, the potential future exposure does not give effect to collateral that is required to be posted against future exposures. Any methodology for calculating derivative exposure must address these fundamental limitations of CEM to avoid an outsized measure of exposure that will limit the ability of FBOs that are active in these markets to continue these activities.

In European regulatory regimes (e.g., Germany, UK), the IMM approach is considered to be preferable since it represents best practice in risk management. When IMM is utilized, regulatory capital is fully aligned to the metrics and models used for day to day risk management. When CEM is the measure of exposure, there is significant misalignment. Additionally the IMM model enables enhanced reporting, which provides transparency to regulators which is not available with CEM.

We understand the potential limitations of model-based approaches. We acknowledge that the financial crisis exposed deficiencies in models used to measure and evaluate risk. Likewise, we recognize that, in the case of internal models that are or have been used by banks for capital purposes, the magnitude of the understatement of risk was sometimes significant. However, we believe that known deficiencies with models can be better mitigated by the following: (i) complementary Stress tests in addition to the models, (ii) model validation and regular re-review of models and parameters, (iii) appropriate risk management governance framework. We believe that deficiencies of this nature, and potential mitigants of these deficiencies are better dealt with in the supervisory process, rather than a rulemaking.

[20] See id.

Repos and Securities Lending Transactions

As proposed under Section 252.243 (a)(4) of the Proposal, repurchase agreements would be valued at the market value of securities transferred by the covered entity to the counterparty plus an add-on representing the collateral haircut applicable to the securities transferred. The haircut is determined by applying a static conversion factor in Table 2 of the Proposal. Similarly, under Section 252.243(a)(7), securities lending transactions would be valued at the market value of the securities loaned by the covered entity to the counterparty plus an add-on representing the collateral haircut applicable to the securities transferred (as specified in Table 2). We concur with the view expressed in The Clearing House April 27, 2012 comment letter [21] that the add-on approach for both types of transactions provides an inaccurate and overstated measure of exposure because the haircuts are excessive in relation to the risk posed by such transactions.

These exposures may also be adjusted, or netted, under Section 252.244. In addition to permitting netting under a bilateral netting agreement for repo and securities lending transactions, Section 252.244 permits a covered entity to reduce its gross credit exposure to a counterparty for any transaction, including a repurchase obligation or securities lending transaction, by the adjusted market value of any eligible collateral. In accordance with the "substitution" rule, however, the covered entity must include the "adjusted market value" of the eligible collateral when calculating its gross credit exposure to the issuer of the eligible collateral, among other requirements. Moreover, the "adjusted market value" is defined as the fair market value of the eligible collateral after application of the proposed applicable haircut. These transactions, therefore, are penalized on both sides—in the "add on" when calculating gross exposure and in the haircut applied to the collateral when reducing gross exposure—which both individually and together result in a gross overstatement of the risk associated with the transaction. The proposed methodology does not adequately take into account the built-in protections of repo and securities lending transactions—the daily marking-to-market and the posting of additional collateral to make up any shortfall. Nor does it take into account the relationship between the securities lent and non-cash collateral securing the transaction or potential portfolio diversification benefits.

Securities financing markets would be disproportionately affected by the Proposal for a number of reasons. The add-on included in calculating gross exposure represents a significant increase to the actual exposure. Because securities lending frequently involves equity and other securities that are subject to higher haircuts under Section 252.243 and Table 2, the impact on securities lending would be significant.

The effects of this calculation methodology will differ depending on the particular circumstances, but the difference will not necessarily have any relationship to risk. In some cases, the covered entity may, as part of its regular practice, or because of the size of its aggregate exposure to the counterparty, choose to shift the exposure to the collateral issuer as opposed to the counterparty. This is a workable solution if the covered entity does not have significant exposure to the collateral issuer or the collateral is cash or U.S.

[21] See id.

government or other exempt obligations. In that case, the exposure to the counterparty is reduced by the collateral and there is no exposure to the collateral issuer that needs to be taken into account. However, there are significant limits to the utility of this approach; the result can only be a significant adverse impact on this market generally.

Debt and Equity Securities

For debt and equity securities, the proposed requirement to layer purchase price as a floor on top of existing credit risk management practices is not necessary and is inconsistent with existing risk-management practices and systems of covered entities. We recommend that exposures to debt and equity securities be measured in accordance with the accounting treatment of the asset utilized by an FBO under its applicable accounting standards.

Question 44: The Federal Reserve requests comment on whether the proposed scope of the attribution rule is appropriate or whether additional regulatory clarity around the attribution rule would be appropriate. What alternative approaches to applying the attribution rule should the Federal Reserve consider? What is the potential cost or burden of applying the attribution rule as described above?

The attribution rule as written is overly broad and could lead to tracking requirements that result in untenable operational complexity. For example, if a covered entity makes a loan to a counterparty that in turn uses the loan to purchase goods from a third party, the attribution rule would result in a credit exposure to that third party because the proceeds of the loan with the counterparty are used for the benefit of or transferred to the third party. Such transactions would be impossible to monitor (in fact the only way to meaningfully comply would be to require pre-approval of all uses of borrowing proceeds, which is simply not feasible) and would be of limited use to FBOs in tracking single counterparty limit exposures. Accordingly, the attribution rule should apply only where the covered entity has intentionally sought to evade a true exposure to one party by structuring the transaction with another party.

Question 45: Should the list of eligible collateral be broadened or narrowed? Should a IHC be able to use its own internal estimates for collateral haircuts as permitted under Appendix G to Regulation Y?

We share the views and concerns expressed by The Clearing House in their April 27, 2012 comment letter [22] that the proposed definition of eligible collateral for the purposes of reducing gross exposure is limited and should be broadened to include other types of collateral commonly accepted in the market, subject to appropriate haircuts.

As long as collateral is subject to appropriate haircuts, an IHC should have a wider range of eligible collateral available to offset counterparty exposures. For example, private label asset-backed and

[22] See id.

mortgage-backed securities are frequently used as collateral in a variety of credit transactions. FBOs have developed internal methodologies to calculate appropriate collateral haircuts, which should be applicable to their IHC. The application of these haircuts would not increase the risk to the IHC nor increase interconnectedness.

Question 46: Is recognizing the fluctuations in the value of eligible collateral appropriate?

Depending on the accounting treatment, recognition of the fluctuation may not be appropriate. For example, where gross credit exposures accounted for on an accrual basis are reduced by the adjusted market value of eligible collateral, recognizing the fluctuations in market value of the eligible collateral could result in asymmetric profit and loss results. In these instances, fluctuations in the value of the exposures accounted for on an accrual basis are not recognized for profit and loss calculations.

Question 47: What is the burden with the proposed rule's approach to changes in the eligibility of collateral?

The Proposal's approach to changes in the eligibility of collateral creates market constraints that could negatively impact the availability and liquidity of eligible collateral. As a result, we recommend a broader definition of eligible collateral as indicated in the response to Question 45.

Question 48: Is the approach to eligible collateral that allows the covered entity to choose whether or not to recognize eligible collateral and shift credit exposure to the issuer of eligible collateral appropriate?

For the same reasons we support optional risk shifting to protection providers, as discussed in our response to Question 43, we would support optional exposure transfer to collateral issuers and would not support a mandatory look-through to collateral.

Question 49: What alternative approaches, if any, to the proposed treatment of the unused portion of certain credit facilities should the Board consider?

In instances where an FBO does not have any legal obligation under a facility, the unused portion should be excluded when calculating gross exposure. Similarly, an FBO should not be penalized by including a credit exposure until it is a committed exposure.

Question 50: Are there any additional or alternative requirements the Board should place on eligible protection providers to ensure their capacity to perform on their guarantee obligations?

Deutsche Bank does not recommend additional or alternative requirements. However, we do believe the Board should look to an FBO's policies and procedures to determine the soundness of its process to arrive at the decision to shift credit exposures to eligible protection providers.

Question 51: Should a covered entity have the choice of whether or not to fully shift exposures to eligible protection providers in the case of eligible guarantees or to divide an exposure between the original counterparty and the eligible protection provider in some manner?

We believe that substitution should not be required in connection with a guarantee and should only be required in accordance with an FBO's written credit risk management policies and procedures. The Proposal would require a covered entity to shift the underlying exposure to a guarantor that is an eligible protection provider. This substitution requirement has the effect of inaccurately reflecting credit exposure because it does not consider the lower probability of double default, thereby making all protection purchased from eligible protection providers wrong way risk.

In addition, automatic substitution requirements are generally not components of an FBO's credit risk management processes. As a result, FBOs would need to develop new systems or undertake significant modifications to existing systems to incorporate this approach.

Question 52: What types of derivatives should be eligible for mitigating gross credit exposure?

Similar to the derivatives eligible for mitigating gross credit exposure contained in the Domestic Proposal, for instances where there is a direct match in reference entity, loan borrower or guarantor, Deutsche Bank believes single name CDS represent the most effective way of reducing gross credit exposure of covered entities.

Question 53: What alternative approaches, if any, should the Board consider to capture the risk mitigation benefits of proxy or portfolio hedges or to permit U.S. intermediate holding companies or any part of the combined U.S. operations to use internal models to measure potential exposures to sellers of credit protection?

Deutsche Bank supports the proposed stressed internal model methodology approach (Stressed IMM Approach) recommended by The Clearing House in their April 27, 2012 comment letter on the Board's domestic 165/6 proposed rule.[23]

Question 54: Would a more conservative approach to eligible credit or equity derivative hedges be more appropriate, such as one in which the U.S. intermediate holding company or any part of the combined U.S. operations would be required to recognize gross notional credit exposure both to the original counterparty and the eligible protection provider?

Deutsche Bank does not believe a more conservative approach would be appropriate under any circumstances. The Proposal's SCCL substitution components would require a new regime for calculating

[23] See id.

credit and equity derivative exposure that is not aligned with how these types of exposures are currently measured, monitored and controlled.

As stated in our response to question 51, automatic substitution requirements are generally not components of an FBO's credit risk management processes. As a result, FBOs would need to develop new systems or undertake significant modifications to existing systems to incorporate this approach.

Due to fact that credit and equity derivatives are derivative transactions, but also may be eligible credit derivatives or eligible equity derivatives, the Proposal read literally would appear to have the consequence (which may be unintentional) of requiring a covered entity to include both of these exposures when calculating its exposure to that counterparty even though it would in a sense be counting the same exposure twice: (i) exposure arising when the covered entity enters into a credit or equity derivative transaction with a counterparty that would be calculated and (ii) exposure arising when that credit or equity derivative transaction is an eligible credit or equity derivative and is entered into with an eligible protection provider with respect to a reference name held by the covered entity, and the covered entity is required to include the exposure.

Question 55: What temporary exceptions should the Board consider, if any?

Deutsche Bank disagrees with the premise that when either the FBO's IHC or combined U.S. operations is not in compliance with a single counterparty credit limit, both the IHC and combined U.S. operations would be prohibited from engaging in any additional credit transactions with the relevant counterparty. Accordingly, in our judgment, special temporary exceptions by the Board to such counterparty limits not in compliance are unnecessary. Deutsche Bank recommends that temporary exceptions like these be reviewed by the Board as a component of the Board's overall quantitative impact study of SCCL.

Question 56: Would additional exemptions for foreign banking organizations be appropriate? Why or why not?

As discussed in our response to Question 39, in our view, in the case of EU countries, a qualified subset of EU sovereigns should be exempted. Our view is based on the fact that the ECB accepts this broader base of issuers of credit worthy collateral. The Proposal would exempt exposures to the U.S. government and home country sovereign; no basis is provided for not exempting exposures to non-U.S. sovereigns that have liquidity and creditworthiness similar to that of the U.S. This creates an unlevel playing field.

Moreover, under the Basel III liquidity provisions, marketable securities (which include claims on or claims guaranteed by sovereigns) are included in the definition of highly liquid assets. The Proposal's SCCL provisions may have the effect of restricting the acceptance of high-quality obligations issued by non-U.S. governments as collateral. The ability of FBOs to transact with a number of creditworthy countries with stable economies will be correspondingly limited. This will negatively impact FBOs with substantial non-U.S. operations to a greater degree than U.S. BHCs.

As a result, Deutsche Bank believes that the Board should exempt other global, credit worthy sovereign issuers where we may have significant banking operations such as a central role in market making in local sovereign debt.

Question 57: Should the Board require that a company's certification under section 252.251 of the proposal include a certification that at least one member of the U.S. risk committee satisfied director independence requirements? Why or why not?

Please see our response to Question 3.

Question 58: Should the Board consider requiring that all U.S. risk committees required under the proposal not be housed within another committee or be part of a joint committee, or limit the other functions that the U.S. risk committee may perform? Why or why not?

Please see our response to Question 3.

Question 59: As an alternative to the proposed U.S. risk committee requirement, should the Board consider requiring each foreign banking organization with combined U.S. assets of $50 billion or more to establish a risk management function solely in the U.S., rather than permitting the U.S. risk management function to be located in the company's head office? Why or why not? If so, how should such a function be structured?

Deutsche Bank submits that a requirement to "establish" a risk management function in a geographic area misunderstands the structure of risk organizations of universal banks. While Deutsche Bank maintains senior management staff at the level of the Risk Executive Committee across all major geographic areas, this does not determine where the risk management function is "established".

Deutsche Bank would expect that the risk management functions of FBOs that address important risks to the U.S. financial system would have a commensurately greater physical presence in the United States than those of other FBOs whose combined U.S. operations pose less systemic risk and that the level of risk management experience based in the United States would also be commensurate with the systemic risk posed by the organization. However, for the reasons previously set forth herein and below, Deutsche Bank does not support a requirement that a risk management function be established 'solely' in the U.S.

There would be little systemic benefit to balkanizing the risk management function at a large FBO, particular when, as in Deutsche Bank's case all relevant information is readily available. Such a requirement may actually create systemic risk by requiring parallel risk management operations, which can only result in greater operational risks. Moreover, the effort to make these operations interact cohesively will inevitably detract from management's ability to manage core risks effectively. The result can only be greater risk to the institution itself and, accordingly, produce greater overall systemic risk. A universal bank should also be allowed to call on risk expertise that may exist outside of a region. To duplicate this expertise in the U.S. would result in functional overlap and increased costs.

The Board has not posited any valid reason why a local risk management function would be appropriate within a global FBO, or indeed demonstrated any significant systemic benefit that would result. If the Board is concerned that management is not paying sufficient regard to matters relating to an FBO's U.S. operations, this is more appropriately addressed through the supervisory process. If the Board's concern is the lack of local accountability, an FBO should be required to designate a local contact of sufficient independence and stature within the institution to ensure that the Board's concerns are appropriately addressed.

Question 60: Should the Board consider requiring or allowing a foreign banking organization to establish a "U.S. risk mgmt function" that is based in the U.S. but not associated with a board of directors to oversee the risk mgmt practices of the company's combined U.S. operations?

Deutsche Bank believes that the U.S. risk management function should be associated with the firm's global board of directors. Please see our response to question 59 for additional detail.

Question 62: Is the scope of review of the risk management practices of the combined U.S. operations of a foreign banking organization appropriate? Why or why not?

The U.S. Risk Committee should have the ability to rely on an FBO's global policies and procedures to the extent that the committee determines that those policies and procedures are appropriate for the FBO's U.S. operations. Establishing stand alone policies and procedures for the U.S. Operations would be duplicative and result in increased costs and complexity that would deflect the Committee's attention from core risk management tasks.

Furthermore, the U.S. Risk Committee should have the ability to rely on the FBO's global governance bodies and processes to support their oversight of the risk management practices of the U.S. Operations and to oversee the operation of an appropriate risk management framework.

The U.S. Risk Committee should also not be required to review the risk management practices and exposures of "material affiliated persons" (for example Deutsche Bank London). Indeed, this is an example of the advantage of having a single unified risk management function so that the U.S. Operations may have transparency into, and confidence in, the risk management activities in other areas.

Question 63: What unique ownership structures of FBOs would present challenges for such companies to comply with the requirements of the proposal? Should the Board incorporate flexibility for companies with unique or nontraditional ownership structures into the rule, such as more than one top-tier company? If so, how?

Please see our response to Question 1.

Question 64: Is it appropriate to require the U.S. risk committee of a FBO to meet at least quarterly. If not, what alternative requirement should be considered and why?

We believe that it is appropriate to require the risk committee of a FBO to meet at least quarterly.

Question 65: Should the Board require that a member of the U.S. risk committee comply with the director independence standards? Why or why not?

Please see our response to Question 3.

Question 66: Should the Board consider specifying alternative or additional qualifications for director independence? If so, describe the alternative or additional qualifications. Should the Board require that the chair of a U.S. risk committee satisfy the director independence standards, similar to the requirements in the December 2011 proposal for large U.S. bank holding companies?

Please see our response to Question 3.

Question 67: Would it be appropriate for the Board to permit the U.S. chief risk officer to fulfill other responsibilities, including with respect to the enterprise-wide risk management of the company, in addition to the responsibilities of section 252.253 of this proposal? Why or why not?

The U.S. chief risk officer should be permitted to fulfill whatever responsibilities are appropriate to his or her institutional role, while allowing the fulfillment of his/her responsibility for the risk management oversight of the U.S. Operations. In our view, it would not be appropriate to require dedication to a Board-defined role, particularly in light of the fact that most FBOs conduct risk management on a global basis, which requires significant cooperation and is reliant on expertise residing in more than one jurisdiction.

Question 69: Should the Board consider approving alternative reporting structures for a U.S. chief risk officer on a case-by-case basis if the company demonstrates that the proposed reporting requirements would create an exceptional hardship or under other circumstances?

The proposed standards require that, in general, a U.S. Chief Risk Officer would report directly to the U.S. Risk Committee and the company's global Chief Risk Officer. Alternative structures should be allowed on a case by case basis if it leads to better risk management.

Question 70: Should the Board consider specifying by regulation the minimum qualifications, including educational attainment and professional experience, for a U.S. chief risk officer?

Deutsche Bank believes that it is not appropriate to specify by regulation the minimum qualifications for a U.S. Chief Risk Officer. An FBO should be able to make the determination as to whether an individual is qualified in light of the institution's overall risk profile, asset composition, business mix and other factors particular to the institution. We believe that the designation of minimum standards would be an unwarranted intrusion into an FBO's operations. Any issues with particular qualifications are best dealt with in the supervisory process.

Question 71: What alternative responsibilities for the U.S. chief risk officer should the Board consider?

We believe that the responsibilities assigned to the U.S. chief risk officer are appropriate.

Question 72: Should the Board require each foreign banking organization with total consolidated assets of $50 billion or more and combined U.S. assets of less than $50 billion to designate an employee to serve as a liaison to the Board regarding the risk management practices of the company's combined U.S. operations?

We believe that communications are best handled through the supervisory process, rather than by mandate through a rulemaking.

Question 73: What other standards should the Board consider to determine whether a foreign banking organization's home country stress testing regime is broadly consistent with the capital stress testing requirements of the Dodd-Frank Act?

Deutsche Bank recommends that the Board consider whether a foreign banking organization's home country stress tests are sufficiently severe and test for appropriate enterprise-wide scenarios. For FBOs whose home country regulators already require their banks to establish a Recovery Plan (alongside a

Resolution Plan), the Board should be prepared to examine this Plan from the perspective that it is intended by the home country regulator to be both appropriately severe and enterprise-wide.

Question 74: Should the Board consider conducting supervisory loss estimates on the U.S. branch and agency networks of large foreign banking organizations by requiring U.S. branches and agencies to submit data similar to that required to be submitted by U.S. bank holding companies with total consolidated assets of $50 billion or more on the FR Y-141? Alternatively, should the Board consider requiring foreign banking organizations to conduct internal stress tests on their U.S. branch and agency networks?

Deutsche Bank believes that stress tests on a stand-alone U.S. branch or agency network would be an illogical construct. The FBO's group resources are available to support the U.S. branch. Any stress test should recognize this fact and focus on the global FBO.

Additional group wide information should only be sought if it is clear that there is no similar enterprise-wide stress test in place.

Question 75: Should the Board consider alternative asset maintenance requirements, including definitions of eligible assets or liabilities under cover or the percentage?

Deutsche Bank believes that the Board should expand the definition of eligible assets to include all assets that are permitted for investment purposes by a U.S. bank, with appropriate haircuts to adequately reflect any credit risk associated with such assets. An expansion of the definition of eligible asset is needed, because given the multiple regulatory schemes in place and being implemented, it is imperative that consistency by achieved wherever practicable, provided that this approach is in keeping with applicable statutory mandates.

Question 82: What alternatives to the definitions and procedural aspects of the proposed rule regarding a company that poses a grave threat to U.S. financial stability should the Board consider?

The definition of what constitutes a grave threat to the U.S. financial system needs to be well defined and based on objective measures that can be corrected by specific remedial measures. The proposed rule leaves "grave threat" undefined and to be determined by the Financial Stability Oversight Council. Not having a clear and measurable definition leaves open the potential for subjective judgments resulting in the debt to equity limitations and asset maintenance requirements leading to an even more unlevel playing field.

Question 83: Should the Board consider a level outside of the specified range? Why or why not?

Deutsche Bank does not believe that remediation buffers are warranted in a fixed rule. Any ranges should be determined using a threshold approach and adjusted as needed. The Board has sufficient access to monitor a situation that has not yet resulted in a significant deterioration in a firm's financial status. In particular, FBOs that provide U.S. regulators with complete transparency into their global operations should not be penalized for the actions of FBOs that do not provide such transparency. The focus of the Board beyond the capital or leverage buffer zones should be to monitor and ensure the firm is appropriately engaged to prevent further deterioration rather than implement any specific remedial actions.

Deutsche Bank would further argue that the de facto capital add-on required by a minimum leverage requirement that includes a 75-100bps buffer should be allowed to be satisfied with a contingent capital instrument. Such an instrument could convert to a hybrid Tier 1 instrument (assuming the minimum common equity requirement for the risk based capital ratio would still be met) at a trigger set at the level of the minimum leverage requirement and would be in an amount that would aim to meet the minimum leverage ratio plus add-on buffer. Without affecting the efficacy of that buffer, this would address the Board's desire to create an effective buffer while allowing FBOs a degree of flexibility in satisfying the requirement.

Question 84: The Board seeks comment on the proposed risk-based capital and leverage triggers. What is the appropriate level within the proposed ranges above and below minimum requirements that should be established for the triggers in a final rule?

The imposition of risk-based capital and leverage buffers to the FBO would accelerate Basel surcharges. These triggers, when applied to the FBO itself, should be phased-in to be consistent with the implementation of the Basel III buffers. In addition, the penalty for violating a buffer should be limited to the entity which violated the buffer as opposed to the entire U.S. operation (particularly in the case where the violation is at the FBO itself, rather than the U.S. operations)

Question 85: The Board seeks comment on how and to what extent the proposed risk-based capital and leverage triggers should be aligned with the capital conservation buffer of 250 basis points presented in the Basel III rule proposal.

Please see our response to Question 84.

Question 86: What alternative or additional risk-based capital or leverage triggering events, if any, should the Board adopt? Provide a detailed explanation of such alternative triggering events with supporting data.

Please see our response to Question 83.

Risk Based capital and liquidity are the primary indicators that a firm is in difficulty and should underlie the monitoring tools the Board uses to monitor the health of a firm.

While leverage is an important metric providing information about how a firm is utilizing its resources, it does not necessarily indicate that a firm is in difficulty. A breach of a leverage limit should not necessarily put a firm into Level 3 remediation (recovery). A stand-alone leverage breach without a similar deterioration of capital or liquidity levels should not result in automatic sanctions but in targeted supervisory measures encouraging the firm to reduce leverage.

Question 87: What additional factors should the Board consider when incorporating stress test results into the early remediation framework for foreign banking organizations? What alternative forward looking triggers should the Board consider in addition to or in lieu of stress test triggers?

Stress test triggers are effective early warning indicators of potential future concerns. Since these do not indicate immediate issues (in the absence of other triggers such as capital or liquidity), they should only initiate Level 2 remediation and not automatically initiate Level 3 remediation. In the event of a significant breach under stress, the Board should initiate a dialog with the firm to understand why the stress test caused a breach and agree a course to remedy the ultimate driver of the breach. If the firm has not simultaneously breached any capital or liquidity triggers, the firm should not be considered to be in immediate danger and should not be subject to recovery remediation efforts.

Question 88: Is the severely adverse scenario appropriately incorporated as a triggering event? Why or why not?

A severely adverse scenario stress test is designed to substantially reduce a firm's capital, liquidity or both. Therefore, a substantial loss of capital or liquidity under such a scenario is to be expected and should not be considered a triggering event. These scenarios also focus, by their nature, on very low probability events and while some kind of severe shock may occur from which the firm will have to recover, it is very unlikely that it will be the scenario chosen for the test. Requiring mandatory remediation solely on the basis the results of a specific stress test is an inappropriate use of these tests. The purpose of severe stress tests is to:

- Initiate an analysis and discussion of the how the stress impacts the firm;
- Identify sensible ways to mitigate the impact;
- Ensure that the firm has appropriate governance and procedures in place to react quickly and decisively if a similar shock occurred and is able to recover from such a shock.

Therefore, a breach of a capital or liquidity level after such a severe stress test should not have the consequence of the firm being put under automatic remediation actions. Instead, the results should initiate discussions between the firm and the Board to agree a course of action.

Question 89: The Board seeks comment on triggers tied to risk management. Should the Board consider specific risk management triggers tied to particular events? If so, what might such triggers involve? How should failure to promptly address material risk management weaknesses be addressed by the early remediation regime? Under such circumstances, should companies be moved to progressively more stringent levels of remediation, or are other actions more appropriate? Provide a detailed explanation.

It is appropriate that weaknesses in a firm's risk management regime should prompt actions by the Board. However, the Board needs to clearly stipulate what it considers ineffective risk management and provide firms time to make changes to meet the Board's standards. In addition, because firms differ significantly in how they are organized, the Board's standards should be based on outcomes rather than prescriptive structures. Firms should also have the opportunity to demonstrate how their approach to risk management meets the Board's requirements prior to a deficiency determination by the Board. As discussed in our previous responses, we believe remediation will be more effective if the Board retains discretion to impose remediation actions as part of the supervisory process, rather than prescriptively. Actions will be more effective if they are tailored to particular deficiencies and the Board retains the ability to progressively impose more stringent actions on a tailored basis

Question 90: Should the Board include market indicators described in section G—Potential market indicators and potential trigger design of this preamble in the early remediation regime for the U.S. operations of foreign banking organizations? If not, what other market indicators or forward-looking indicators should the Board include?

A detailed response to this question is provided below under Question 95.

Question 91: How should the Board consider the liquidity of an underlying security when it chooses indicators for the U.S. operations of foreign banking organizations?

A detailed response to this question is provided below under Question 95.

Question 92: Should the Board consider using market indicators to move the U.S. operations of foreign banking organizations directly to level 2 (initial remediation)? If so, what time thresholds should be considered for such a trigger? What would be the drawbacks of such a second trigger?

A detailed response to this question is provided below under Question 95.

Question 93: To what extent do these indicators convey different information about the short-term and long-term performance of foreign banking organizations that should be taken into account for the supervisory review?

A detailed response to this question is provided below under Question 95.

Question 94: Should the Board use peer comparisons to trigger heightened supervisory review for foreign banking organizations? How should the peer group be defined for foreign banking organizations?

A detailed response to this question is provided below under Question 95.

Question 95: How should the Board account for overall market movements in order to isolate idiosyncratic risk of foreign banking organizations?

The below responds to Questions 90 to 95

We strongly oppose the use of market indicators in the early remediation provisions. Market measures are not necessarily reliable indicators of institutional stress. Triggers based upon market measures could be tripped solely on the basis of trading decisions of third parties, which are often designed to create the appearance of financial stress for private benefit. Moreover, assuming that an objective market trigger could be determined, the result would be pro-cyclical and could accelerate an institution's decline. To the extent that a trigger is designed to remediate institution- specific weaknesses, imposing a trigger that is not based upon a weakness, but instead a market perception, which may not be an indicator of actual weakness, would not be appropriate. We discuss our objections in greater detail below.

Market triggers are particularly problematic and should not be used to trigger predetermined remediation actions in the absence of other types of trigger breaches. Unlike other triggers discussed in this rule, market triggers are largely outside of the control of management. Trigger breaches of market based metrics can be caused by:

- Overall market movements
- Adverse perception of the industry generally
- General lack or temporary loss of market liquidity
- Profit-driven motives of individuals or groups of market participants
- Market rumors

Therefore, Deutsche Bank believes that market based triggers in the absence of other trigger breaches should not initiate automatic remediation actions by a firm but should instead result in discussion with the firm as to the cause and approach to alleviate the market trigger breaches. If, after these discussions, the Board believes that the breaches are substantive and indicative of underlying problems, the Board should have the discretion to impose targeted remediation actions focused on addressing the underlying cause of the breach. In determining whether the breaches are substantive and indicative of underlying problems, the Board should consider:

- Peer comparisons
- Overall market movements
- Liquidity of the instruments
- Applicability of the instruments to the U.S. operations of the firm

Question 96: What additional monitoring requirements should the Board impose to ensure timely notification of trigger breaches?

In addition to existing reporting requirements, the reporting requirements specified in the Proposal are sufficient to allow for timely notification of the Board. The requirement that a firm notify the Board in the event of a trigger breach should ensure that the Board has ample time to deal with a trigger event. FBOs that provide U.S. regulators with complete transparency into their global operations should not be penalized for the actions of FBOs that do not provide such transparency.

Question 97: Should the Board provide an exception to the prior approval requirement for de minimis acquisitions or other acquisitions in the ordinary course? If so, how would this exception be drafted in a narrow way so as not to subvert the intent of this restriction?

So as to not restrict legitimate activity by a firm Deutsche Bank recommends that the rule, in addition to allowing de minimis acquisitions, should explicitly allow acquisition of shares directly or indirectly, under section 4(k) of the BHC Act, in connection with (i) conducting its permissible merchant banking activities and customer-driven investment fund activities in accordance with the Board Regulation Y; (ii) underwriting, dealing in, or making a market in securities in accordance with Regulation Y; and (iii) hedging the risks incurred in ongoing permissible activities.

Question 98: The Board seeks comment on the proposed mandatory actions that would occur at each level of remediation. What, if any, additional or different restrictions should the Board impose on distressed foreign banking organizations or their U.S. operations?

> Rather than mandating the imposition of all of the potential remediation actions described in the Proposal, the Board should have discretion at each level to determine which actions a firm is required to take. Different types or severity of breaches should invite a tailored response. In addition, the Board should retain the scope to progressively impose more severe remediation actions if they do not believe sufficient action is being taken.

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