April 30, 2013

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

RE: Notice of Proposed Rule Regarding Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies

Chairman Bernanke:

On behalf of the Organization for International Investment (OFII), I write in response to the Notice of Proposed Rule (NPR) to implement Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA), which would impose enhanced prudential standards for foreign bank organizations (FBO) and foreign nonbank financial companies [Docket No. 1438].

OFII is a business association representing U.S. subsidiaries of companies headquartered abroad that directly employ 5.3 million Americans and support an annual U.S. payroll of $408 billion (OFII's membership list is attached). OFII works to ensure fair and non-discriminatory treatment for its member companies and advocates for policies which increase U.S. competitiveness in attracting foreign direct investment (FDI).

The U.S. financial sector is the second largest industry sector for inbound FDI, accounting for 15 percent or 37.7 billion in total foreign investment in the U.S. economy.[1] FBOs play a substantial role in the U.S. financial market, holding approximately 22 percent of total U.S. banking assets, accounting for 25 percent of commercial and industrial loans made by banks, and 17 percent of deposits.[2] Furthermore, 14 of the Fed's 21 primary dealers are U.S. subsidiaries of foreign banks.[3]

OFII is pleased that the Board of Governors of the Federal Reserve System (Board) recognizes the benefits FBOs bring to U.S. markets in the NPR. However, OFII is concerned the proposed rule departs from the internationally-recognized and codified principle of national treatment and fails to take into account comparable home country regulations. As a result, the NPR would disadvantage FBOs, discourage foreign investment in the U.S. financial sector, and fail to comply with DFA's instruction to respect the principle of national treatment and recognize comparable home-country standards.[4]

[1] U.S. Department of Commerce, Bureau of Economic Analysis: Direct Investment Positions for 2011, July 2012; available at http://www.bea.gov/scb/pdf/2012/07%20July/0712_dip.pdf
[2] Federal Reserve, Share Data for U.S. Offices of Foreign Banking Organizations, December 31, 2012; available at http://www.federalreserve.gov/releases/iba/fboshr.htm
[3] Federal Reserve Bank of New York, available at http://www.newyorkfed.org/markets/pridealers_current.html
[4] Section 165 (b)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act

The proposed rule requires U.S. subsidiaries of FBOs to be placed under a new type of intermediate bank holding company (IHC) with separate capital, liquidity, and other regulatory requirements. The proposed IHC structure creates an unlevel playing field in the United States, placing FBOs at a competitive disadvantage to their domestic counterparts in multiple ways. First, even foreign owned broker-dealers not affiliated with a U.S. insured bank must still establish an IHC subject to strict capital rules, leverage ratios, and stress tests by the Federal Reserve in addition to current U.S. Securities and Exchange Commission capital requirements. In contrast, a comparable U.S. non-bank holding company would not have to comply with the additional regulations. Furthermore, DFA gave specific instructions to the Board to consider whether a company owns an insured depository institution when establishing prudential standards.[5] Congress intended Section 165 standards to be risk-based and applying leverage ratios designed as a backstop for banks with their generally illiquid loan portfolios would result in an unjustified reduction in FBOs' broker-dealer activity.

Second, in treating the U.S. operations of FBOs as a separate and independent entity, the proposal denies IHCs the benefit of the global capital and liquidity of their parent companies, while U.S. bank holding companies are permitted to take into account collateral and support from their non-U.S. operations. These proposed requirements are a clear violation of the principle of national treatment.

Moreover, the proposed rule fails to take into account comparable consolidated home country standards. Even FBOs from countries with higher capital requirements would need to form a separately capitalized IHC to comply with the proposed rule. FBOs would be forced to allocate capital and liquidity based on both host-country and home-country rules, while U.S. banks would have one set of consistent home-country regulations with which to comply.

This imbalanced treatment of FBOs will have significant unintended consequences that may, in fact, weaken the U.S. financial system. FBOs may be forced to scale back or terminate their U.S. non-branch operations, acquire U.S. banks to comply with the proposed new capital requirements for IHCs, or avoid further investment in U.S. operations. These actions will lead to further concentration of U.S. bank activity and reduced liquidity in the United States, increasing risks to U.S. financial stability and undermining a stronger economic recovery.

OFII is also concerned that the Board's proposal will have significant international ramifications. The proposed rule jeopardizes international efforts to promote a "stable and integrated global financial system and to prevent future crises" as outlined by G20 Leaders.[6] By ignoring the principle of national treatment and failing to recognize home country standards, the proposed rule creates significant risk that other countries will adopt similar measures and place burdensome requirements on U.S. banks operating abroad. The proposed rule could also encourage a global race towards fragmented, host-country financial regulatory policies. This approach would reduce cross-border investment and trade in services, and undermine both U.S. financial stability and economic growth.

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[5] Section 165 (b)(3) of the Dodd-Frank Wall Street Reform and Consumer Protection Act

[6] G20 Leaders Declaration, June 19, 2012, available at http://www.whitehouse.gov/the-press-office/2012/06/19/g20-leaders-declaration

Additionally, the proposed rule has the potential to undermine U.S. trade negotiations, particularly the International Services Agreements and the recently-launched Transatlantic Trade and Investment Partnership with the European Union. The proposed rule conflicts with the same type of standards U.S. negotiators currently seek to secure for U.S. financial firms operating abroad, undermining their negotiating position and threatening potential gains that could ensure more open markets for U.S. financial services providers.

As the Board works to finalize this rule, OFII recommends that changes be made to comply with DFA instructions under Section 165 (b)(2) to ensure the principle of national treatment and take into account comparable home country standards. OFII strongly urges that the Board better align U.S. enhanced prudential standards with international financial reform efforts already underway, including internationally-agreed enhancements to the Basel Accord and proposals by the Financial Stability Board.

We believe making these improvements to the current proposed rule will create a structure more capable of addressing systemic risk and prevent a race toward a globally fragmented and protectionist financial regulatory landscape. It is essential that the final rule protects financial markets in a non-discriminatory manner that encourages further foreign investment in the financial sector. Thank you for the opportunity to comment.

Respectfully,

Nancy L. McLernon
President & Chief Executive Officer