April 30, 2013

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Attention: Robert deV. Frierson, Secretary

Re: Proposed Rules Implementing Sections 165 and 166 of the Dodd-Frank Act for Foreign Banking Organizations and Foreign Nonbank Financial Companies (Docket No. 1438; RIN 7100 AD 86)

Ladies and Gentlemen:

The Clearing House Association L.L.C. ("**The Clearing House**"),[1] joined by the American Bankers Association ("**ABA**")[2] and the Financial Services Roundtable ("**The Roundtable**")[3] (collectively, the "**Associations**"), appreciate the opportunity to comment on the

---

[1] Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world's largest commercial banks, which collectively employ over 2 million people and hold more than half of all U.S. deposits. The Clearing House is a nonpartisan advocacy organization representing — through regulatory comment letters, amicus briefs and white papers — the interests of its owner banks on a variety of issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily and representing nearly half of the automated clearing-house, funds transfer, and check-image payments made in the U.S. See The Clearing House's web page at www.theclearinghouse.org.

[2] The ABA represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its 2 million employees. Learn more at www.aba.com.

[3] The Roundtable represents 100 integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. The Roundtable member companies provide fuel for America's economic engine, accounting directly for $98.4 trillion in managed assets, $1.1 trillion in revenue, and 2.4 million jobs.

notice of proposed rulemaking issued by the Board of Governors of the Federal Reserve System (the "**Board**") regarding the enhanced prudential standards and early remediation provisions of Sections 165 and 166 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") for foreign banking organizations ("**FBOs**") and foreign nonbank financial companies (the "**Proposal**").[4] This letter will focus on our concerns with the basic policy approach to host-country regulation of international banks that is reflected in the Proposal, rather than on its specific provisions, which we expect will be addressed in the comments of individual banks and other trade associations. In addition to these concerns, we respectfully submit, as discussed further below, that the Board has not incorporated in the Proposal the Dodd-Frank Act's statutory mandate to take into account how covered FBOs are regulated on a consolidated basis under home-country regulation and generally to consider whether home-country regulation is comparable to the enhanced standards that the Board would otherwise apply.[5]

I. International bank regulation should be based on a policy of regulatory cooperation and coordinated prudential standards.

The Associations believe that the fundamental policy that should shape the regulation of internationally active banks is one of coordination and cooperation among international regulatory authorities in developing and implementing comparable and sound prudential standards. This is the best route to a safe and sound banking system that supports strong economic growth, financial stability, and free competition. As applied, this policy should manifest itself in (i) comparable and robust global standards in key prudential areas, such as capital and liquidity, which are adopted and implemented consistently among the relevant regulatory authorities, (ii) information sharing and effective cooperation among the principal regulators of internationally active banks, (iii) enhanced national and international mechanisms for the resolution of the global operations of internationally active banks, and (iv) robust bank risk management systems and processes. We believe that substantial progress has been made since the financial crisis to strengthen the banking system in each of these areas. Indeed, The Clearing House has played a leading role in industry efforts to advance these principles through a number of initiatives, including its recent Resolution Simulation Exercise[6] and corporate governance project.[7]

---

4 See 77 Fed. Reg. 76632 (Dec. 28, 2012).

5 See 12 U.S.C. § 5365(b)(2).

6 See The Clearing House, Report on the Orderly Liquidation Authority Resolution Symposium and Simulation (Jan. 2013), available at http://www.theclearinghouse.org/index.html?f=074709. The Clearing House's Title II OLA-Resolution Simulation Exercise – which took place on November 8 and 9, 2012 – simulated the failure of a large U.S.-based global banking organization and its resolution under the Title II single-point-of-entry approach. The Resolution Simulation Exercise confirmed that Title II can be used as an effective tool for resolving a failing U.S.-based SIFI in a way that prevents any exposure of taxpayers to losses arising out of the failure, wipes

International regulatory authorities historically have cooperated and coordinated to foster a level international playing field through implementation of compatible prudential standards. Continued cross-border cooperation and coordination would allow host-country regulators to largely defer to home-country regulatory regimes and substantially decrease the incentive for host countries to impose additional prudential requirements on those portions of a banking organization's operations located in a host-country jurisdiction.

The Associations are concerned that the Proposal will undermine global cooperation in the implementation of prudential standards at a time when cooperative efforts are moving forward in several critical areas. Accordingly, the Associations urge the Board to continue its traditional leadership role in working to achieve greater international consistency in implementation of prudential standards at the consolidated level. As a starting point, before imposing additional prudential standards on the U.S. operations of a large number of FBOs, as the Proposal would do, we respectfully submit that the Board, as it has done in the past, should conduct a thorough assessment of the prudential oversight of FBOs and describe how the Board's additional requirements specifically address any identified inadequacies.[8]

II. The Board should continue in its long-standing leadership role in encouraging global cooperation and coordination with respect to the regulation of international banking organizations and not, as the Proposal does, shift to a ring-fenced, balkanized approach to FBO regulation in the United States.

The Board should maintain its traditional role as a leader in promoting international coordination and cooperation instead of endorsing a new regulatory framework for FBOs operating in the United States based upon national ring-fencing of the local operations of internationally active banks.[9] The Associations believe that the Proposal's approach, which would necessarily involve the balkanization of a sizable share of the global banking system along

---

out the SIFI's shareholders, imposes losses on creditors, preserves the SIFI's critical operations and core businesses, holds culpable management accountable, and prevents runs, cascading defaults on derivatives and financial panic.

[7] See The Clearing House, Guiding Principles for Enhancing Banking Organization Corporate Governance (June 6, 2012), available at http://www.theclearinghouse.org/index.html?f=073631.

[8] See e.g., joint Department of the Treasury and Board Subsidiary Requirement Study (Dec. 18, 1992) (study conducted to determine whether foreign banks should be required to conduct banking operations in the United States through subsidiaries rather than branches).

[9] See generally Nicholas Comfort, Bloomberg, *German Regulator Slams Tarullo's Banking Plan for U.S.* (Mar. 1, 2013), available at http://www.bloomberg.com/news/2013-03-01/german-regulator-slams-tarullo-s-banking-plan-for-u-s-.html (quoting Elke König, President of the Federal Financial Supervisory Authority, Germany's financial regulatory authority, who remarked that she found the Proposal to be a "step backward" in international regulatory coordination and that "such a unilateral decision goes in the wrong direction").

national borders, could both impair economic recovery and growth and increase, rather than diminish, systemic risk. For this fundamental reason, the Associations urge that implementation of the Proposal be reconsidered.

III. The Proposal's IHC requirement is a form of ring-fencing, which would have highly undesirable consequences for both FBOs and U.S. banking organizations.

A centerpiece of the Proposal would be a new requirement that an FBO with significant operations in the United States create an intermediate holding company (an "**IHC**") to hold all its U.S. subsidiaries. In addition to the significant costs and practical difficulties in complying with this mandate, which are discussed below, the IHC requirement would significantly curtail some banks' flexibility to structure their overseas operations so as best to address their particular circumstances.[10] Although operating in a given jurisdiction through a single holding company may be appropriate for some FBOs that voluntarily elect such a structure, others may conclude that, given the nature of their current business model, a mandatory IHC structure would impose undue costs, undermine the conduct and risk management of their overseas operations, and actually erode their safety and soundness. Moreover, depending on the levels of capital and liquidity that are required to be "pre-positioned" in the IHC in order to address potential financial stresses, the Proposal's IHC requirement could significantly affect even those FBOs that would otherwise elect to operate through a U.S. holding company. We submit that efforts to regulate by imposing a uniform, ring-fenced structure across a wide variety of operations, businesses, risk profiles and cultures are unwarranted.

The Associations are opposed to the IHC requirement because it is a form of mandated ring-fencing, which we oppose irrespective of whether it takes the form of subsidiarization of branches or the mandatory use of national holding companies.[11] In general, the IHC mandate, like other ring-fencing measures, would trap capital and liquidity in the relevant jurisdiction, in this case, the United States. At a superficial level, such a result may seem to be a desirable policy. We submit, however, that a ring-fencing approach represents an undesirable policy outcome for at least three basic reasons.

First, to the extent that well-capitalized banks with robust liquidity manage their capital and liquidity on a consolidated basis, some banks retain and rely on the flexibility to shift financial resources within the organization to their location of highest and best use, including —

---

[10] See McKinsey Global Institute, Financial Globalization: Retreat or Reset? at page 34 (Mar. 2013), available at http://www.mckinsey.com/insights/mgi/research/financial_markets/financial_globalization (noting that the current regulatory trend towards subsidiarization requires banks to adopt new organizational structures that curtail international expansion).

[11] We also believe that the Board's U.S.-centric liquidity proposal creates many of the same issues as the IHC requirement.

most crucially — to a particular geographic or business operation in times of financial or market stress. Their ultimate strength resides in the ability to obtain support from the necessarily larger consolidated resources of the global enterprise. Yet, if a ring-fenced approach becomes the global standard, it would become significantly less likely that the global organization, whether it be an FBO or internationally active U.S. banking organization, will be able to shift its resources to where they are most needed.[12] If, for example, the U.S. operations of an FBO were to encounter significant losses and/or a liquidity crisis, the home country would be likely to forbid the FBO from shifting resources to the U.S. operations out of a concern that the U.S. ring-fencing regime would discourage, and quite possibly preclude, a reciprocal resources shift. Likewise, if the Board requires a designated level of capital and liquidity at the IHC (or branch), it is unlikely to permit it to be diminished if the FBO's non-U.S. operations encounter difficulty. U.S. banking organizations would face similar difficulties to the extent that their non-U.S. operations were subject to separate capital and liquidity requirements in host countries. Thus, we believe ring-fencing can run directly counter to the objective of ensuring adequate support for the operations of a bank in the host (or even home) country in which a problem arises.[13]

Second, ring-fencing has an undesirable effect of layering multiple capital and liquidity requirements on banking organizations, thereby increasing burden and complexity. This is the case because meeting special requirements in each ring-fenced jurisdiction that have been increased on the assumption that there can be no call on the resources of the organization outside the jurisdiction will almost certainly lead to greater cumulative requirements than those imposed on the consolidated enterprise.[14] To be clear, the Associations support efforts to ensure a

---

[12] See McKinsey Global Institute, supra note 10, at page 34 (noting that subsidiarization limits banks' ability to employ deposit surpluses in one country for the purpose of lending in another).

[13] We note, in this regard, that a decision by an FBO (or other banking organization) itself to operate through a holding company structure in a country does not necessarily have this ring-fence result. In that case, because the FBO has voluntarily decided to elect that structure, there is no reason to believe that the FBO would not, or could not, transfer capital or liquidity from or to another part of its operations if needed. In contrast, in the event of a mandated ring-fence, the ability to transfer capital or liquidity will be very much in doubt.

[14] See William C. Dudley, President and Chief Executive Office, Federal Reserve Bank of New York, What Does Interconnectedness Imply for Macroeconomic and Financial Cooperation, Remarks at the Swiss National Bank-International Monetary Fund Conference (May 8, 2012), available at http://www.newyorkfed.org/newsevents/speeches/2012/dud120508.html (noting that, in the absence of an effective global regulatory regime, national authorities may fall back on a subsidiarization model, which would require "greater capital and liquidity as the banks would lose the significant risk of diversification benefits gained from operating in many different countries"); see also Mark Carney, Governor of the Bank of Canada, Rebuilding Trust in Global Banking (Feb. 25, 2013), available at http://www.bankofcanada.ca/2013/02/speeches/rebuilding-trust-global-banking/ (remarking that proposals to ring-fence capital and liquidity standards of foreign bank units operating in the local jurisdiction could substantially reduce the global financial system's efficiency); Eugenio Cerutti & Christian Schmieder, Ringfencing and consolidated bank stress tests (April 13, 2013), available at http://www.voxeu.org/article/ringfencing-and-consolidated-bank-stress-tests.

strongly capitalized banking system with robust liquidity. Since the financial crisis, regulatory requirements have been imposed in furtherance of that objective. The Associations believe, however, that widespread application of additional host-country requirements could result in total capital and liquidity requirements that are so burdensome as to impair the effective operation of the banking system and banks' capacity to support the economy and promote economic recovery and growth — that being the ultimate purpose of the banking system.[15]

As the Associations understand the thrust of the Proposal, it would require FBOs to "pre-position" sufficient capital and liquidity in the United States to address substantial financial stress without significant (or perhaps any) reliance on support from other units in the organization. We believe that, in order to fulfill this objective, banks would be forced to maintain capital and liquidity buffers in host countries substantially above what would be appropriate if the resources of the entire organization were taken into account. Thus, the requirement to maintain capital and liquidity buffers in each host jurisdiction beyond what banks would maintain in considering the entire organization's resources necessarily amplifies capital and liquidity requirements regardless of whether the institution determines, as a business matter, that its optimal structure is one where it operates through subsidiaries or through branches. This reflects the loss of the flexibility to shift capital or liquidity to where it may be most needed to cover losses. Yet, the impact of ring-fencing on the effective cumulative capital and liquidity requirements applicable to covered FBOs is neither estimated nor even discussed in the Proposal. Given the significance of this issue and the lack of concrete data on which to assess its effect, the Associations urge the Board to (i) conduct a quantitative study on the impact that this approach would have on the industry, including on U.S. banking organizations, and (ii) publish the data and results of that study for public comment before finalizing the Proposal.

Third, at a time when the regulatory community is pursuing an international framework for the effective global resolution of internationally active banks, the thrust of the Proposal would move us in exactly the opposite direction.[16] Although, as the Chairman of the Federal Deposit Insurance Corporation ("**FDIC**") and the President of the Federal Reserve Bank of New York have both recently noted, coordinated cross-border regulatory cooperation on global

---

[15] See McKinsey Global Institute, supra note 10, at page 34 (highlighting the negative effects of such "trapped pools of capital and liquidity", including the reduction in banks' overall lending capacity and raising banks' cost of operations through, among other things, the erosion of economics of scale); see also Duncan Wood, US foreign bank plans threaten bail-in system, says Finma (April 5, 2013), available at http://www.risk.net/risk-magazine/news/2259110/us-foreign-bank-plans-threaten-bailin-system-says-finma (interviewing Mark Branson, head of the banks division at Switzerland's prudential regulator, Finma, who noted that the Proposal's requirement for localized pools of capital and liquidity could have the effect of impeding credible top-down cross border resolution regimes for globally active banks headquartered outside the United States).

[16] Letter from Michel Barnier, Member of the European Commission, to Ben Bernanke, Chairman, Federal Reserve Board (April 18, 2013) (finding that certain elements of the Proposal may be contradictory to global regulatory convergence and could negatively impact the implementation of Basel III).

resolution is essential,[17] the Proposal instead reinforces a balkanized approach to national regulation of internationally active banks that implicitly assumes that a workable cross-border resolution framework cannot be or will not be achieved. This approach is inconsistent with, and indeed is likely to undermine, the laudable efforts underway at the FDIC in the U.S. and the Bank of England and other regulators overseas to implement the Key Attributes of Effective Resolution Regimes issued by the Financial Stability Board ("**FSB**") and otherwise develop sound cross-border resolution regimes for internationally active banks.[18] It is not clear what incentive international regulators and internationally active banks would retain to complete this important work if the United States — and presumably other international regulators that would be likely to follow suit, as we discuss further below — required the ex ante balkanization of banks' operations along national boundaries in a way that made resolution along those same national boundaries the most likely and logical consequence.

IV. The Proposal's balkanization approach could push the international regulatory community further towards ring-fencing or other domestic self-help solutions at the expense of international cooperation and does not account for, and does little to promote, progress on cooperative solutions.

The Associations understand that the Proposal reflects the Board's concern that other jurisdictions are moving towards a ring-fenced approach that may make support for the U.S. operations of FBOs less forthcoming. The very existence of any such trend, however, makes it especially important for the Board to maintain its traditional role as a leading sponsor of global coordination and cooperation with respect to FBO regulation instead of proposing a balkanized approach founded upon an IHC mandate. The United States remains the world's major banking market, and the Board is widely regarded as a leader in the regulatory community. Adoption of the IHC mandate would be a powerful impetus to encourage similar actions by other regulators around the world.[19] Thus, adoption of the Proposal could be the key inflection point in the movement towards a forced "siloed" global banking system that is less efficient, less safe and

---

[17] See Dudley, supra note 14; Martin J. Gruenberg, Chairman, Federal Deposit Insurance Corporation, Implementing Wall Street Reform: Enhancing Bank Supervision and Reducing Systemic Risk, Statement to the Committee on Banking, Housing, and Urban Affairs (June 6, 2012), available at http://www.fdic.gov/news/news/speeches/chairman/spjun0612.html.

[18] See Financial Stability Board, Key Attributes of Effective Resolution Regimes for Financial Institutions (Oct. 2001), available at http://www.financialstabilityboard.org/publications/r_111104cc.pdf; FDIC and the Bank of England, Resolving Globally Active, Systemically Important, Financial Institutions (Dec. 10, 2012), available at http://www.bankofengland.co.uk/publications/Documents/news/2012/nr156.pdf.

[19] Barnier, supra note 16 (noting that the Proposal could "spark a protectionist reaction from other jurisdictions, which would ultimately have a substantial negative impact on the global economic recovery").

less capable of supporting the broader economy and promoting economic recovery and growth.[20] Moreover, we respectfully suggest that, if the Board adopts the IHC mandate and thus promotes a more "siloed" approach, it will actually be encouraging and legitimizing decisions by non-U.S. authorities to abandon the U.S. operations of troubled banks and could leave their resolution to the U.S. authorities. It is critical that the Board embrace the G-20's call for regulatory cooperation and help counter, not join the forces of, balkanization.[21]

The Associations believe that, instead of pursuing the IHC mandate and other ring-fence aspects of the Proposal, the Board should adopt appropriate capital and liquidity requirements for the U.S. units of covered FBOs based on risks posed by their businesses, while relying on the FBO's overall resources to address crisis situations. Reasonable host-country requirements focused on the nature of the risk of the FBO's businesses in that jurisdiction, when coupled with the robust requirements being imposed at the consolidated level, is, in our view, the optimal approach. We recognize this approach entails the continuation of the Board's historic approach of evaluating the ability and willingness of the organization as a whole to support the local unit and the willingness of the organization's regulator to impose requirements that, if not the same as U.S. requirements, are comparable to and consistent with them. We respectfully submit, however, that, although this approach imposes a burden on the Board, it is the only approach that is sensible in the long-term. The answer to the inherent potential for mistakes in the exercise of regulatory judgment cannot be a rigid structural regulatory scheme that attempts to eliminate all judgment. The Board and other governmental authorities should be directing their efforts to enhancing global cooperation in the implementation of consistent prudential standards to ensure such support is forthcoming and should not succumb to the temptation to further ring-fence U.S. operations or to substitute uniform structural requirements for thoughtful, directed and individualized prudential standards.

In a recent speech, Michel Barnier, a leading member of the European Commission, expressed these same deep concerns. He remarked that he views the Proposal as "moving away

---

[20] See Carney, supra note 14 ("[A] more balkanized system that concentrates risk within national borders would reduce systemic resilience globally"); McKinsey Global Institute, supra note 10, at pages 45, 49 (finding that such balkanization could lead to "a return to rapid growth in financial assets and cross-border capital flows leaves the world vulnerable to the risk of yet another crisis — and all the collateral damage that would entail").

[21] See, e.g., Declaration: Summit on Financial Markets and the World Economy (Nov. 15, 2008), available at http://www.g20.utoronto.ca/2008/2008declaration1115.html (committing to reinforce international cooperation and suggesting that "[re]gulators should enhance their coordination and cooperation across all segments of financial markets, including with respect to cross-border capital flows. Regulators and other relevant authorities as a matter of priority should strengthen cooperation on crisis prevention, management, and resolution"); The G-20 Toronto Summit Declaration (June 26-27, 2010), available at http://www.g20.utoronto.ca/2010/to-communique.html (reaffirming a pledge to "continue working to ensure cooperation among jurisdictions in financial institution resolution proceedings").

from cooperation with international partners – a cooperation which [he views] as absolutely necessary".[22] In this regard, Barnier stated:

> The EU and US are at a crossroads. If we choose to part ways, this will send the wrong signal to markets and to the rest of the world. It would increase the cost of capital, and reduce growth prospects. If we can work together and cooperate, we can continue to provide a common base for international finance, boosting growth and employment. We have a unique opportunity to show that we choose cooperation over disunity.[23]

It would be ironic, and we believe an unfortunate mistake, for the Board to abandon its traditional leadership role in encouraging coordination and cooperation among international regulatory authorities at the very time when so many global initiatives are moving forward on such critical issues as capital, liquidity, resolution, transparency and governance. Of course, there is much more to do to ensure that internationally agreed principles are implemented as consistently as possible for internationally active institutions, but that should spur on greater efforts, not an abandonment of the basic course.

V. The Proposal failed to execute the Board's statutory mandate under Section 165.

We respectfully submit that the Proposal failed to carry out the Congressional mandate with respect to the application of Section 165 to FBOs. Section 165(b)(2) of the Dodd-Frank Act makes clear that Congress intended the Board to impose heightened prudential standards to FBOs according to the same principles of deference to comparable home-country regimes and preservation of competitive equality that it historically has applied when regulating FBOs and contemplated that such heightened standards would need to be tailored for their special circumstances in order to preserve international comity and cooperation. The Board was given no discretion to ignore these obligations:

> [T]he Board of Governors <u>shall</u> (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 [FBO] is subject on a consolidated basis to home country standards

---

[22] Michel Barnier, European Commissioner for Internal Market and Services, Why Global Markets Require Global Rules – and US-EU Cooperation, Speech delivered at the Transatlantic Finance Initiative (Feb. 15, 2013), available at http://www.theclearinghouse.org/docs/074811.pdf; see also Dudley, supra, note 14 (noting with respect to regulatory coordination that "national regulators need to be willing to constrain their unilateral actions somewhat in order to facilitate engagement and cooperative solutions on a global basis"); Comfort, supra note 9.

[23] Barnier, supra note 22; see also Carney, supra note 14.

> that are comparable to those applied to financial companies in the United States.[24]

Notwithstanding this mandate, there is almost no discussion in the Proposal of the Board's consideration of the second obligation — comparability of home-country standards to those applied in the United States. In fact, the Proposal appears at odds with the clear language of the statute, which was to take into account an evaluation of consolidated standards. The Proposal does not examine whether, and the extent to which, FBOs are subject to comparable home-country prudential standards that would allow the Board to defer to home-country regulatory regimes and obviate the need to impose additional host-country standards. As discussed in this comment letter, the Proposal does the very reverse by treating FBOs the same regardless of their home-country regulatory regime.

Likewise, the Proposal appears largely to ignore both the principle of national treatment and equality of competitive opportunity. There is no discussion in the Proposal of a differentiation based on the treatment of U.S. banks in the home country. Although the Board is rightly concerned with competitive equality for U.S. banks in terms of prudential regulation, there is no consideration of the risk that superficially similar requirements can have a substantially different actual impact (e.g., due to the fact that the IHC would be a geographically limited, lower-tier holding company rather than the top-tier holding company of the FBO).

VI. The Board should adopt a more flexible approach for global institutions based on deference to effective home-country regulators and regulatory schemes, the implementation of specific prudential standards and the exercise of caution before adopting fundamental changes in the regulatory model.

The Associations respectfully suggest that there are three basic principles that the Board should adopt as it considers the appropriate framework for global regulation. First, the Associations believe that global implementation of prudential standards for internationally active institutions should be harmonized to the extent possible, which would enable host countries, in normal circumstances, to give deference to the home-country regulator and its regulatory scheme. Regulatory balkanization should be minimized. If each host country seeks to impose its own regulatory scheme in a discordant fashion, there will be confusion and inconsistency, as well as substantial additional cost.[25]

---

24 12 U.S.C. § 5365(b)(2) (emphasis added).

25 Barnier, supra note 16 (enumerating the types of increased costs FBOs will be forced to bear to comply with the Proposal, including costs associated with establishing and maintaining the IHC and its compliance with regulatory standards and prudential requirements, and costs related to reduced flexibility in effectuating capital and liquidity management strategies).

Second, we believe that specific regulatory prudential requirements, primarily capital and liquidity, should be utilized, rather than prescribing specific corporate structures, such as the IHC. In terms of corporate structure for financial institutions, the fact is that one size does not fit all, and individual institutions should be free to determine the legal entity structure that best suits their needs.

The third basic principle is that fundamental changes in the regulatory model should only be made in compelling circumstances, which presumably will arise only infrequently. Otherwise, business operations that have evolved over many years under one set of regulatory expectations could suffer a severe diminution in value if those expectations fundamentally change. Such losses of value, of course, weaken the banking system and the respect in which it and the regulatory system are held. In light of the great strides made in the global regulatory framework for internationally active banks since the financial crisis, and the ongoing cooperative efforts mandated by the G-20 governments, there are compelling reasons to move forward with these cooperative efforts and not to abandon them in favor of a balkanized approach, such as that reflected in the Proposal.

Building on these principles, an approach to application of Sections 165 and 166 to FBOs can be devised in a manner that is aligned with the important statutory directives of the Dodd-Frank Act, including limiting the risks that large FBOs may pose to the U.S. financial system.

VII. At a minimum, the Associations believe that implementation of the Proposal should be on a timetable consistent with global regulatory initiatives.

Because the Proposal could run counter to the basic principles of international regulatory coordination and cooperation in developing prudential standards, the Board should, in any event, reconsider and defer implementation of the Proposal so that it could be consistent with global regulatory initiatives. The Associations believe it is not appropriate to proceed with implementation of the Proposal at this time for several reasons.

First, a deferral in implementing the Proposal would allow additional time for further implementation of the significant efforts underway in the global regulatory community to improve cross-border cooperation on critical issues such as capital, liquidity and resolution.[26] The Associations believe that it is important to allow initiatives of the G-20 and FSB to be carried out as appropriate and that the Board lend its support to these endeavors and not, as the Proposal's approach threatens, undermine the global cooperative nature of these efforts.

In addition, allowing for such deferral will give the Board additional time to be informed by the credibility determinations made with respect to the resolution strategies included in the

[26] See Barnier, supra note 22 (noting the substantial progress that has been made and is being made on the G-20 international program, particularly with respect to capital, resolution and recovery).

"living wills" submitted at the end of 2013 by third-round filers, which includes most FBOs. It also would provide the Board time to conduct impact studies on the Proposal's effect on the industry, particularly with respect to the capital and liquidity buffer, as we recommend above.

Finally, and in any event, the Associations believe that the Board should defer implementation of the Proposal to provide the Board with sufficient time to give full effect to the concerns submitted by commenters to the proposed rules the Board issued in December 2011 to implement the enhanced prudential standards and early remediation provisions of Sections 165 and 166 of the Dodd-Frank Act for U.S. bank holding companies and nonbank systemically important financial companies. The Proposal follows in many respects the approach taken by the Board in its domestic proposal, and significant industry and other comments were submitted to the Board, including by the Associations, voicing concerns with a number of aspects of that proposal.[27] Deferring action on the Proposal will give the Board additional time to address these comments in a consistent manner for both U.S. institutions and FBOs.

* * * *

In conclusion, the Associations consider the Proposal to be a matter of fundamental importance because it is a significant turning point, not only for the regulation of FBOs in the United States, but for the global regulation of international banks. We view a ring-fenced, balkanized banking system as contrary to the basic function of the banking system to support economic growth. Given the Board's stature in the regulatory community, what the Board does here will be of enormous precedential importance. We urge the Board to reconsider the approach taken in the Proposal, and adopt a more flexible framework, more consistent with its historic approach to FBO regulation and the principles we have set forth above.

At a minimum, we strongly suggest that the Board defer implementation of the Proposal to provide additional time for the international regulatory community to continue to advance its agenda and the Board to gain insight from the "living will" process and collect quantitative data on the Proposal's impact. In any event, the Board should defer action on the Proposal in order to take into account comments on its previously issued proposal under Sections 165 and 166 of the Dodd-Frank Act with respect to U.S. institutions.

---

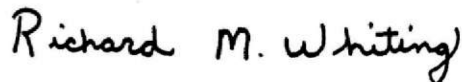
27 See Joint trade comment letter, dated April 27, 2012, addressed to Jennifer L. Johnson, available at http://www.theclearinghouse.org/index.html?f=073837.

We appreciate the opportunity to comment on the Proposal, and representatives of the Associations would be pleased to meet with the Board on this critical issue.

Very truly yours,

Paul Saltzman
President, The Clearing House Association L.L.C.
Executive Vice President and General Counsel of
The Clearing House Payments Company L.L.C.

Wayne A. Abernathy
Executive Vice President, Financial Institutions
Policy and Regulatory Affairs
American Bankers Association



Richard M. Whiting
Executive Director & General Counsel
The Financial Services Roundtable

cc: Hon. Ben S. Bernanke
Board of Governors of the Federal Reserve System

Hon. Janet L. Yellen
Board of Governors of the Federal Reserve System

Hon. Elizabeth A. Duke

Board of Governors of the Federal Reserve System

Hon. Daniel K. Tarullo
Board of Governors of the Federal Reserve System

Hon. Sarah Bloom Raskin
Board of Governors of the Federal Reserve System

Hon. Jeremy C. Stein
Board of Governors of the Federal Reserve System

Hon. Jerome H. Powell
Board of Governors of the Federal Reserve System

Hon. Jacob J. Lew
Department of the Treasury

Hon. Thomas J. Curry
Office of the Comptroller of the Currency

Hon. Martin J. Gruenberg
Federal Deposit Insurance Corporation

Hon. Richard Cordray
Consumer Financial Protection Bureau

Hon. Mary Jo White
U.S. Securities and Exchange Commission

Hon. Gary Gensler
Commodity Futures Trading Commission

Ms. Mary John Miller
Department of the Treasury

Mr. Cyrus Amir-Mokri
Department of the Treasury

Mr. Amias Gerety
Department of the Treasury

Mr. Christopher J. Meade
Department of the Treasury

Mr. S. Roy Woodall, Jr.
Financial Stability Oversight Council

Mr. Mark Carney
Bank of Canada

Mr. Evan Sidall
Bank of Canada

Mr. Paul Tucker
Bank of England

Mr. Andrew Bailey
Bank of England

Mr. Paul Sharma
Bank of England

Ms. Mei Gant
Bank of England

Mr. Andrew Gracie
Bank of England

Ms. Lauren Anderson
Bank of England

Mr. Michel Barnier
European Commission

Ms. Elke König
Bundesanstalt für Finanzdienstleistungsaufsicht

Mr. Ryutaro Hatanaka
Financial Services Agency

Mr. Masamichi Kono
Financial Services Agency

Mr. Nobuchika Mori
Financial Services Agency

Mr. Jens Weidmann
Deutsche Bundesbank

Ms. Sabine Lautenschläger
Deutsche Bundesbank

Mr. Patrick Raaflaub
Eidgenössische Finanzmarktaufsicht

Mr. Mark Branson
Eidgenössische Finanzmarktaufsicht

Mr. Mario Draghi
European Central Bank

Mr. Glenn Stevens
Reserve Bank of Australia

Mr. Christian Noyer
Banque de France

Mr. Gérard Rameix
Autorité des Marchés Financiers

Mr. Norman Chan
Hong Kong Monetary Authority

Mr. Haruhiko Kuroda
Bank of Japan

Mr. Sergey M. Ignatiev
Bank of Russia

Mr. Thomas Jordan
Schweizerische Nationalbank

Mr. Ignazio Visco
Banca *d'Italia*

Mr. Giuseppe Vegas
Commissione Nazionale per le Società e la Borsa

H. Rodgin Cohen, Esq.
Sullivan & Cromwell LLP

Michael M. Wiseman, Esq.
Sullivan & Cromwell LLP