CREDIT SUISSE

April 30, 2013

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

Re: **Proposed Rule on Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies; Docket No. R–1438; RIN 7100 AD 86**

Ladies and Gentlemen:

Credit Suisse A.G. ("Credit Suisse") appreciates the opportunity to comment on the proposed rule issued by the Board of Governors of the Federal Reserve System ("Federal Reserve") on *Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies* ("Proposed Rule").[1]

Credit Suisse fully supports the goal of the Proposed Rule: to mitigate financial stability risks by imposing an appropriate set of enhanced prudential standards on the U.S. operations of larger foreign banking organizations ("FBOs") under section 165 of the Dodd-Frank Act.[2] Credit Suisse has been an outspoken supporter of key regulatory reforms, including improvements to resolution and liquidity, that are central to the policy objectives underlying the Proposed Rule. However, we believe that the current proposal goes beyond the statutory mandate in section 165 and could have substantial adverse effects on systemic risk, global regulatory cooperation, competitive fairness, and the U.S. and global economy. Accordingly, we believe that the Proposed Rule should be substantially modified to mitigate these significant adverse effects while meeting its policy objectives.

In particular, the Proposed Rule:

- Fails to tailor the enhanced prudential standards applicable to an FBO by taking into account comparable standards in the FBO's home country—contrary to the express statutory requirement to do so in Dodd-Frank;

- Discriminates against FBOs—especially FBOs with large U.S. broker-dealer operations—contrary to the express Dodd-Frank requirement to give due regard to the longstanding principle of "national treatment" and competitive equality;

[1] 77 Fed. Reg. 76,628 (Dec. 28, 2012).

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (2010).

- Fails to take into account whether an FBO owns an insured depository institution in the U.S.—a key distinction recognized in section 165 of Dodd-Frank;

- Imposes overlapping and extremely costly compliance regimes on FBOs, in effect disregarding comparable home country standards that implement the same international standards to achieve the same prudential goals;

- Ring-fences capital and liquidity in a U.S. intermediate holding company ("IHC"), which will (1) reduce the ability of the consolidated FBO to prudently allocate capital and liquidity and thereby weather economic stress; (2) encourage other countries to adopt similar ring-fencing proposals that will similarly restrict and confine capital within national borders; (3) potentially encourage home country governments *not* to support an FBO's U.S. operations in times of stress; and (4) increase pressure on host country lenders of last resort because of these effects;

- Is at cross purposes with efforts to develop credible cross-border regimes for the resolution of large, internationally active financial institutions; and

- Effectively imposes extraterritorial capital requirements on parent FBOs, particularly with respect to the leverage ratio, thereby interfering with home country regulators' ability to regulate their own institutions.

These concerns with the Proposed Rule, and especially its IHC ring-fencing requirement, are potentially quite significant. Mark Carney, Governor of the Bank of Canada and Chairman of the Financial Stability Board ("FSB"), recently highlighted major concerns with this approach as follows: "[S]ome supervisors are moving to ensure that subsidiaries in their jurisdictions are resilient on a stand-alone basis. . . . Left unchecked, these trends could substantially decrease the efficiency of the global financial system. . . . [and] a more balkanized system that concentrates risk within national borders would reduce systemic resilience globally."[3]

The U.S. has historically been a leader in regulatory efforts and in promoting the free movement of capital. Its decisions on local entity supervision will be evaluated and perhaps

[3] Remarks by Mark Carney to the Richard Ivey School of Business, Western University (Feb. 25, 2013), *available at* http://www.bis.org/review/r130226c.pdf. The Swiss Finance Department raised similar concerns—specifically pointed at the Proposed Rule—in a letter to the U.S. Department of Treasury. *See* Letter from Michael Ambühl, State Secretary for International Financial Matters, Swiss Finance Department, Swiss Confederation to Neal Wolin, Deputy Secretary of the Treasury (April 23, 2013). The Deutsche Bundesbank and the Federal Financial Supervisory Authority of Germany also raised similar concerns regarding the Proposed Rule in a letter to the Federal Reserve. *See* Letter from Sabine Lautenschläger, Deputy President, Deutsche Bundesbank, and Elke König, President, BaFin, to the Federal Reserve System (April 26, 2013).

emulated by other nations.[4] Ideally, its implementation of section 165 should promote a more stable financial system, whether implemented on a standalone basis or a global reciprocal basis. Unfortunately, we believe that a number of elements of the Proposed Rule, such as the discrimination, ring-fencing, and extraterritorial provisions, would be detrimental to financial stability and U.S. interests if adopted by other nations.

Accordingly, we respectfully request the Federal Reserve to adopt substantial modifications to the Proposed Rule, especially to the IHC requirement. Consistent with the Dodd-Frank directive, we believe that U.S. enhanced prudential standards applicable to FBOs should be tailored to take into account the extent to which comparable standards are imposed by the FBO's home country. Where such comparable home country standards apply, it would be fully consistent with the letter and spirit of Dodd-Frank for the U.S. IHC requirement not to apply (or to be substantially modified). This is especially true when the FBO does not operate a banking subsidiary in the U.S. and therefore is not a U.S. bank holding company ("BHC").

If the IHC requirement is fundamentally motivated by a concern that the capital held by broker-dealer legal entities is insufficient—as recently suggested by a senior Federal Reserve official[5]— then the better approach is to solve this concern directly. In that case, we suggest that the better approach would be for the Federal Reserve to work with the Financial Stability Oversight Council ("FSOC") and the Securities and Exchange Commission ("SEC") to improve these standards so that the existing rules are updated in a way that is fair to all broker-dealers. This approach would be much more appropriate than superimposing through the IHC a burdensome and overlapping, BHC regulatory regime on top of a broker-dealer structure—especially when that regime applies only to foreign-owned broker dealers.

In addition, the Proposed Rule should be modified to eliminate or substantially modify the extraterritorial provision that would effectively establish a new consolidated leverage ratio capital requirement for an FBO in contravention of capital requirements established by the FBO's home country supervisor. At a minimum, we believe such a requirement should not be imposed unless the FBO's home country regulator has been provided notice and an opportunity to object.

If, however, the Federal Reserve should decide to proceed with the IHC requirement despite the real concerns of industry, foreign governments, and multilateral government organizations, we strongly urge that the IHC requirement be modified in several ways to achieve its policy objective in more effective and less burdensome ways. These suggested modifications are summarized below and described in more detail in Section XI.

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[4] *See* Letter from Michel Barnier, Member of the European Commission, to Ben Bernanke, Chairman of the Federal Reserve Board (April 18, 2013) ("We fear that the NPR could spark a protectionist reaction from other jurisdictions, which could ultimately have a substantial negative impact on the global economic recovery.").

[5] *See* Remarks by Eric Rosengren, President and Chief Executive Officer of the Federal Reserve Bank of Boston, at the 22nd Annual Hyman P. Minsky Conference on the State of U.S. and World Economics (April 17, 2013), *available at* http://www.bos.frb.org/news/speeches/rosengren/2013/041713/index.htm.

First, a significant stated goal for the Proposed Rule is concern over the capacity or willingness of foreign governments or FBOs to support their U.S. entities during financial crises.[6] This concern can be addressed equally through other, less burdensome means. Other forms of capital kept in the U.S., such as contingent convertible debt or subordinated debt subject to "bail in," also would provide the U.S. entity with significant local resources. These types of capital should be counted as equity for IHC purposes because they also ensure capacity and willingness to pay in times of economic stress. Another way to ensure willingness to provide resources when needed would be for an FBO to establish a guarantee of the IHC, such as a "keep-well" agreement. Such instruments or guarantees should be counted as equity as well because they provide loss absorbing resources to the IHC in times of stress, just as common equity would, but at much lower cost to the parent FBO.

Second, the Proposed Rule should be clarified to ensure that the Federal Reserve has adequate discretion to make adjustments for varying FBO organizational structures to satisfy the IHC requirement—not just in "exceptional circumstances" but in any situation where unique characteristics of individual FBOs may be addressed while still supporting the fundamental policy purpose of the regulation. In particular, while the Proposed Rule appropriately permits multiple IHCs to address structuring issues in certain instances, it should also make clear that an FBO may designate a lower tier holding company as the IHC so long as that entity and its subsidiaries have adequate capital and liquidity in the U.S. to support the operating subsidiaries where losses may occur.

Third, even where U.S. capital and other BHC requirements are deemed to apply to an IHC, we believe that the IHC should be able to rely on a robust home country supervisory and governance regime for calculating and implementing these requirements, especially under the Advanced Approaches of the Basel Agreements. It is likewise more appropriate to rely on a robust risk framework maintained by an FBO for trading, capital, and single counterparty credit limits ("SCCL"), and for related risk governance, than to establish an entirely separate and distinct risk framework at the IHC level. Such deference to robust home country standards would greatly reduce the substantial and unnecessary costs that the Proposed Rule would otherwise impose by requiring redundant implementation of similar rules. This approach may also produce substantial time and resource savings for supervisors. And, it would be fully consistent with the Dodd-Frank directive to take into account any such comparable home country standards.

Fourth, any final rule should make clear that excess liquidity above the minimum amounts required should be permitted to flow freely outside of the U.S. to address needs in other parts of an FBO's operations.

Finally, to the extent that a substantially higher leverage ratio would be imposed on the IHC than would otherwise be required, that requirement should be phased in over time consistent with the Basel III timetable for phasing in the international leverage ratio.

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[6] *See, e.g.*, 77 Fed. Reg. 77,630–31; Speech by Daniel Tarullo, Governor of the Board of Governors of the Federal Reserve System, at the Yale School of Management Leaders Forum (Nov. 28, 2012), *available at* http://www.federalreserve.gov/newsevents/speech/tarullo20121128a.htm.

I. Background on the Proposed Rule

The Proposed Rule seeks to implement sections 165 and 166 of the Dodd-Frank Act, which, among other things, direct the Federal Reserve to impose enhanced prudential standards on systemically important financial institutions. Recognizing the differences among companies, the Dodd-Frank Act permits the Federal Reserve to "tailor" these standards depending on different companies' "capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), [and] size,"[7] as well as on "whether the company owns an insured depository institution."[8] Furthermore, in applying these standards to the U.S. operations of FBOs, Dodd-Frank expressly requires the Federal Reserve to uphold two longstanding U.S. policies. It must:

- "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;"[9] and
- "Give due regard to the principle of national treatment and equality of competitive opportunity."[10]

Unfortunately, we believe the Proposed Rule fails to satisfy these requirements. Instead, in a departure from existing policy and practice, the Proposed Rule would require any FBO with global assets of $50 billion or more and U.S. assets of $10 billion or more (excluding U.S. branch and agency assets) ("large FBOs") to create an IHC in the U.S. to hold all of its U.S. subsidiaries.[11] *All* such IHCs would become fully and equally subject to U.S. enhanced prudential standards—without any adjustments to recognize comparable home country standards. This would be accomplished by regulating each IHC as a U.S. BHC—even if the IHC does not own a U.S. bank or insured depository institution,[12] as is the case with Credit Suisse. Thus, for example, the IHC would be subject on a standalone basis to the same risk-based and leverage ratio capital requirements that apply to U.S. BHCs. Likewise, the U.S. operations of a large FBO would be subject on a standalone basis to enhanced prudential standards that will apply to large U.S. BHCs, including requirements for liquidity, single-counterparty credit limits, risk management, and stress testing.

Finally, the U.S. operations of an FBO would be subject to an enhanced early remediation requirement that would apply extraterritorially to the parent FBO. That is, the early remediation regime identifies five proposed factors—capital, stress tests, risk management, liquidity risk management, and market indicators—that trigger four levels of U.S.-required

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[7] 12 U.S.C. § 5365(a)(2)(A).

[8] *Id.* § 5365(b)(3)(A)(iii).

[9] *Id.* § 5365(b)(2)(B).

[10] *Id.* § 5365(b)(2)(A).

[11] *See* 77 Fed. Reg. at 76,680 (proposed 12 C.F.R. § 252.201).

[12] *See id.* at 76,635.

remediation actions that increase in stringency.[13] The five threshold triggers for remediation may be breached by the IHC, U.S. branch and agency network, *or the parent FBO*.[14] The four levels of remediation, which apply to the IHC and U.S. branch and agency network, include restrictions on growth, capital distributions, and intragroup funding; liquidity requirements; changes to management; and even the termination or resolution of the combined U.S. operations of an FBO.[15] Although these remediation restrictions technically apply only to the FBO's U.S. operations, they could be triggered by a decline in the level of the consolidated capital of the parent FBO below new levels established by the Proposed Rule that exceed Basel III required levels and the home country's own required levels. Particularly with respect to the internationally agreed Basel leverage ratio, the extraterritorial effect of this proposed early remediation requirement would constitute a new, U.S. consolidated capital standard for an FBO that is higher than that required by its own home country supervisor and agreed international standards.

II. Background on Credit Suisse and its U.S. operations.

Credit Suisse is a banking organization headquartered in Switzerland that operates in over 50 countries around the world. Its primary operations in the United States are a bank branch and a securities broker-dealer subsidiary, which traces its roots to the 1930s. Credit Suisse does not own a U.S. bank or other insured depository institution or a U.S. BHC. Further, because it does not own an insured U.S. depository institution or U.S. BHC and does not fall within the definition of a "nonbank financial company supervised by the Board of Governors,"[16] Credit Suisse is not subject to the so-called "Collins Amendment" in Dodd-Frank.[17] As a result, Dodd-Frank plainly does not require that Credit Suisse's U.S. operations become subject to the generally applicable capital requirements that apply to U.S. depository institutions, and the Federal Reserve has maximum flexibility to tailor requirements to address any supervisory concerns.

One fundamental stated purpose of the Proposed Rule is to address concerns raised by the pronounced recent trend of many FBOs both to grow their U.S. operations substantially and to obtain very substantial amounts of dollar funding for their non-U.S. operations.[18] Neither of these concerns applies to Credit Suisse. First, the growth of the U.S. operations of Credit Suisse over the last 10 years has been entirely consistent with the growth of peer competitors in the U.S., including U.S.-headquartered firms. Second—and much more important given the concerns raised in the preamble to the Proposed Rule—unlike the "U.S. branches and agencies [of FBOs] that provided more than $700 billion on a net basis to non-U.S.

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[13] *See id.* at 76,701 (proposed 12 C.F.R. § 252.282).

[14] *See id.*

[15] *See id.* at 76,702–03 (proposed 12 C.F.R. § 252.284).

[16] This term applies only to a nonbank financial company that has been designated as systemically important by the Financial Stability Oversight Council under section 113 of Dodd-Frank. *See* 12 U.S.C. § 5311(a)(4)(D).

[17] *See id.* § 5371(b)(1), (2).

[18] *See* 77 Fed. Reg. 76,630.

affiliates" in 2008,[19] Credit Suisse has long been a net *importer* of liquidity *into* the United States—including during the financial crisis. That is, Credit Suisse has primarily funded its U.S. operations with dollars raised locally in the U.S., supplemented with the import of U.S. dollar liquidity from its global operations.

In addition, unlike U.S. branch and broker-dealer subsidiaries of FBOs that required "considerable amounts of liquidity" from the Federal Reserve during the financial crisis,[20] Credit Suisse's U.S. operations did not. Instead, they remained liquid throughout the financial crisis, and to the extent liquidity support was required, it was generally provided by its Swiss parent. Credit Suisse did not obtain "considerable amounts of liquidity" from the U.S. central bank, and it likewise did not obtain support from the U.S. Treasury's Troubled Asset Relief Program ("TARP") or the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program ("TLGP"). It also did not obtain similar types of support from the Swiss government.

Furthermore, the assets that Credit Suisse currently holds in the United States—especially those held outside its bank branch by nonbanking entities that appear to be a focal point of the Federal Reserve's concerns—are generally liquid securities, marked-to-market daily, that could be sold into the market even in a severe crisis. Most of these securities are held in its U.S. broker-dealer subsidiary, and that subsidiary has consistently operated with capital levels that significantly exceed the minimum capital requirements imposed by the SEC on all U.S. broker dealers. The assets in Credit Suisse's U.S. broker-dealer are also subject to consolidated capital requirements applicable to its Swiss parent that may at times require more capital than is required by the SEC. But Credit Suisse is able to draw on excess capital as needed from other parts of its global operations to help satisfy any such additional required capital, just as a U.S. BHC may satisfy the consolidated capital requirements applicable to any U.S. broker-dealer subsidiary by drawing on excess capital from other parts of its global operations.

Although Credit Suisse weathered the financial crisis without requiring support from the U.S. or Swiss governments, it has since substantially strengthened its consolidated capital and liquidity positions. Indeed, the organization is now subject to minimum consolidated capital and liquidity requirements imposed by its Swiss regulator, the Financial Market Supervisory Authority ("FINMA"), that substantially exceed the minimum capital and liquidity levels required by the Basel III Agreement.[21] In addition, Credit Suisse is in full compliance today with the proposed Basel III Net Stable Funding Ratio, even though that ratio is not required to be implemented globally until 2018, and likewise will be able to comply readily with the required Basel III Liquidity Coverage Ratio that will be implemented on January 1, 2015.

Indeed, as demonstrated in Appendix 1, Credit Suisse on a global consolidated basis is now subject or will become subject to enhanced prudential standards that are comparable

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[19] *Id.*

[20] *Id.*

[21] *See, e.g.*, FINMA, *Addressing "Too Big to Fail": The Swiss SIFI Policy* 9–11, 14 (June 23, 2011); Appendix 1 (comparing U.S., international, and Swiss standards).

to those that the Federal Reserve has proposed to apply to U.S. bank holding companies in implementing section 165 of the Dodd-Frank Act. These standards applicable to Credit Suisse result both from existing Swiss requirements and from future requirements that the Swiss government has already adopted and will be applying to implement international agreements.

III. The proposed IHC requirement fails to take into account the extent to which an FBO is subject to comparable consolidated standards imposed by its home country.

The Dodd-Frank Act directs the Federal Reserve, in drafting rules applying enhanced prudential standards to the U.S. operations of large FBOs, to "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."[22] The preamble to the Proposed Rule states broadly that the proposal "has taken into account home country standards in balance with financial stability considerations and concerns about extraterritorial application of U.S. enhanced prudential standards."[23] More specifically, the preamble states that "[t]he proposed capital and stress testing standards rely on home country standards to a significant extent with respect to a foreign banking organization's U.S. *branches and agencies*."[24]

Notably, this statement does not speak at all to the need to take into account comparable home country standards when applying the enhanced prudential standards to U.S. *subsidiaries* of FBOs. The reason for the omission in this context appears to be that, in fact, the Proposed Rule does not take into account the comparability of a particular home country's standards. Instead, it imposes the "one-size-fits-all" requirement of the IHC: regardless of a particular home country's standards, *all* large FBOs are required to form IHCs to hold all their U.S. subsidiaries, and *all* IHCs are subject to exactly the same U.S. BHC requirements and U.S. enhanced prudential standards. Thus, the IHC requirement appears to contravene the express Dodd-Frank directive to take into account the comparability of a particular FBO's home country standards when imposing enhanced prudential standards on the U.S. operations of that FBO.

This approach of applying a uniform IHC requirement is not only inconsistent with the letter and spirit of Dodd-Frank, but it also marks a departure from the Federal Reserve's longstanding policy of promoting and relying on strong home country supervision as a bedrock principle for its treatment of FBOs. For instance, under existing U.S. law, the worldwide operations of an FBO are subject to consolidated capital requirements imposed by the FBO's home country, which in nearly all cases are consistent with the international capital standards issued by the Basel Committee on Banking Supervision ("Basel Committee").

The preamble to the Proposed Rule attempts to explain why the Federal Reserve did not further consider home country standards as directed by Dodd-Frank: "[R]elying solely on home country implementation of the enhanced prudential standards would . . . present

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[22] 12 U.S.C. § 5365(b)(2)(B).

[23] 77 Fed. Reg. 76,632.

[24] *Id.* (emphasis added).

challenges" because "[s]everal of the Act's required enhanced prudential standards are not subject to international agreement."[25] This rationale does not appear to be an adequate basis for rejecting an express statutory directive to take into account comparable home country standards, especially when there is no suggestion in the statute that the Federal Reserve should rely "solely" on such standards; instead, the directive is to take them into account.[26]

Moreover, the explanation in the preamble that "several of the Act's required enhanced prudential standards are not subject to international agreement"[27] obscures the fact that many such standards *are* subject to international agreement or have been adopted by particular countries. For example, it is acknowledged in the preamble that the "international regulatory community has made substantial progress on strengthening consolidated bank capital standards in response to the crisis,"[28] and the Basel Committee recently concluded that "stress testing has become a key component of the supervisory assessment process [of member countries] as well as a tool for contingency planning and communication."[29] The Basel Committee also has adopted liquidity standards[30] for larger institutions and recently proposed a framework to limit credit exposures to a single counterparty.[31]

Even more important, the Proposed Rule does not recognize or in any way take into account the possibility that a particular country might adopt its own enhanced prudential standards that, when taken together with international standards, would be comparable to the enhanced prudential standards applicable to U.S. BHCs. This omission seems fundamentally inconsistent with the Dodd-Frank requirement to take such home country standards into account, which in Credit Suisse's case is particularly important given the strong and comparable Swiss and international standards to which it is subject, as demonstrated in Appendix 1. Indeed, the uniformly applicable IHC requirement effectively ignores the substantial Swiss efforts to strengthen its banks and address the "too big to fail" issue. Among other requirements, the Swiss approach includes a higher equity requirement than the international standard, as well as a large contingent capital requirement to ensure additional capital in the event of stress.[32]

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[25] *Id.* at 76,637.

[26] *Id.*

[27] *Id.*

[28] *See id.* at 76,639.

[29] *Id.* at 76,661 (citing Basel Committee on Banking Supervision, Peer Review of Supervisory Authorities' Implementation of Stress Testing Principles (April 2012)).

[30] *See* Basel Committee on Banking Supervision, Basel III: The Liquidity Coverage Ratio and Liquidity Risk Monitoring Tools (January 2013).

[31] *See* Basel Committee on Banking Supervision, Consultative Document: Supervisory Framework for Measuring and Controlling Large Exposures (March 2013).

[32] *See, e.g.*, FINMA, *Addressing "Too Big to Fail": The Swiss SIFI Policy* 11 (June 23, 2011); Appendix 1 (comparing U.S., international, and Swiss standards).

In sum, given the express requirement in Dodd-Frank to account for comparable consolidated home country standards, the longstanding policy and practice in favor of such an approach, and the substantial progress the international community and individual countries have made toward adopting and implementing enhanced prudential standards, Credit Suisse strongly believes that any final rule should be modified to take into account comparable standards of an FBO's home country when applying U.S. enhanced prudential standards to that FBO's U.S. operations—not just to its branches and agencies, but also to its subsidiaries.

IV. The IHC requirement discriminates against FBOs—especially an FBO like Credit Suisse that does not own a U.S. bank and whose main U.S. subsidiary is a securities broker-dealer—and is fundamentally at odds with the principle of national treatment.

With respect to implementing the requirement of applying enhanced prudential standards to the U.S. operations of FBOs, the Dodd-Frank Act directs the Federal Reserve to "give due regard to the principle of national treatment and equality of competitive opportunity."[33] This directive is entirely consistent with the Federal Reserve's longstanding policy and practice of regulating FBOs in the same manner as their U.S. BHC counterparts. Yet the Proposed Rule fails to give due regard to this principle; instead, it would result in unfair discrimination against key aspects of an FBO's U.S. operations. This discriminatory effect is especially pronounced in two areas: capital and single counterparty credit limits.

A. Capital Requirements

The Federal Reserve's existing regulatory capital regime treats U.S. BHCs and FBOs similarly, while giving due regard to the regulatory authority of the FBO's home country supervisor. Thus, both U.S. BHCs and FBOs must comply with consolidated capital requirements implementing the same Basel capital standards at the top-tier level of the organization, with each country tailoring the implementation of such requirements to the institutions in its jurisdiction. In addition, a U.S. subsidiary of either an FBO or a U.S. BHC must fully comply with U.S. capital requirements directly applicable to that subsidiary, such as the U.S. bank capital requirements for a bank subsidiary and the SEC's net capital requirements for a broker-dealer subsidiary. This sensible framework recognizes that different capital requirements are appropriate for different types of business risks and that the top-tier organization can draw on excess capital in other businesses to satisfy the consolidated capital requirement applicable to any one subsidiary.

The Proposed Rule would change this sensible framework by applying U.S. BHC capital requirements to a subset of a large FBO's U.S. operations—its U.S. subsidiaries owned by an IHC. The effect of this "silo" approach is discriminatory because the IHC cannot draw on the capital of its parent FBO or non-U.S. affiliates to meet its consolidated U.S. BHC capital requirement. In contrast, a U.S. BHC could aggregate capital fully across all of its subsidiaries—both foreign and domestic—to meet the same requirement.

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[33] 12 U.S.C. § 5365(b)(2)(A).

This discriminatory effect is significantly amplified where a substantial majority of an IHC's assets are held in a securities broker-dealer subsidiary, as is the case with Credit Suisse.[34] Such an IHC-owned broker-dealer would effectively be required to hold substantially more capital under the U.S. BHC capital rules than under the SEC's net capital rule applicable to all U.S. broker-dealers. For example, if the most substantial U.S. subsidiary owned by the IHC were a U.S. broker-dealer, as is the case with Credit Suisse, then that broker-dealer would effectively be required to meet the U.S. BHC's minimum required capital and leverage ratios. The capital required by these bank-centric regulations is likely to be substantially higher for the broker-dealer than the amount required by the SEC's net capital rule, especially due to the leverage ratio requirement of the banking rules. In that context, the IHC could not count excess capital held by its parent FBO, whether in its own banking operations or in other non-U.S. subsidiaries, to offset any shortfall between the net capital required under the SEC rule for the broker-dealer and the minimum capital required for the IHC.

In essence, the higher BHC capital requirements designed for banking assets would supersede the lower SEC capital requirement designed for liquid, marked-to-market broker-dealer assets—even though the lower result of the broker-dealer requirement in no way reflects a deficiency in the SEC's net capital regime.[35] In contrast, a U.S. BHC that owns a U.S. broker-dealer can meet that same type of shortfall by drawing on the excess capital of all its other, worldwide subsidiaries, including its U.S. bank subsidiary; in that case, the U.S. BHC capital requirements would *not* supersede the SEC capital requirement for the broker-dealer subsidiary.

Moreover, by effectively imposing U.S. BHC capital requirements on IHC-owned broker-dealers, the Proposed Rule appears to contravene section 5(c)(3) of the Bank Holding Company Act, which expressly prohibits the Federal Reserve from imposing "rules, guidelines, standards, or requirements on any functionally regulated subsidiary of a bank holding company," including a securities broker-dealer.[36] Where the sole or predominant asset of an IHC is a broker-dealer subsidiary, the Federal Reserve's proposal would effectively be imposing on the broker-dealer subsidiary exactly the type of capital requirement that section 5(c)(3) expressly proscribes.

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[34] In the case of Credit Suisse, approximately 90 percent of the non-branch U.S. assets are held in SEC regulated broker-dealers. *See also* Oliver Wyman, Enhanced Prudential Standards for Foreign Banking Organizations: An Impact Assessment 21 (April 30, 2013) ("Effects of the proposed rule will be felt most acutely by FBOs with major broker-dealers . . . .").

[35] The SEC's net capital rule, which is crafted to reflect the relative liquidity and marked-to-market value of assets held in the broker-dealer, is much better tailored to the particular risks involved with securities positions. The BHC leverage ratio is not so tailored and by definition does not take into account the relative riskiness of particular securities positions. In any event, to the extent that there are concerns about the adequacy of SEC capital rules, these should be addressed by the SEC for all broker-dealers—including broker-dealers owned by U.S. BHCs and stand-alone U.S. broker-dealers—and not just those owned by FBOs.

[36] 12 U.S.C. § 1844(c)(3)(A), (5)(B)(i).

An example illustrates the significant discriminatory effect of the Proposed Rule as applied to broker-dealer subsidiaries. Credit Suisse's U.S. operations consist primarily of a branch and a broker-dealer. As the primary asset of the IHC, the U.S. broker-dealer would be required to meet U.S. BHC capital requirements on a stand-alone basis, with a leverage ratio under the Proposed Rule of as much as 5.25 percent (and perhaps as much as 6 percent due to the effect of the U.S. stress testing requirement). Today, large broker-dealers in the U.S. typically maintain leverage ratios below that number, and sometimes well below. For example, the leverage ratio of Credit Suisse's broker-dealer reported in publicly available SEC submissions is 3.8 percent, but the publicly available leverage ratios of its major "bulge bracket" U.S. broker-dealer competitors are significantly lower, ranging from approximately 3.4 percent to 1.6 percent. As a result of the Proposed Rule, Credit Suisse would effectively be required to increase the broker-dealer's leverage ratio to as much as 6 percent, while its U.S. competitors could remain well below 4 percent. That is, the other firms could continue to draw on excess capital in their worldwide operations to satisfy any shortfall between their broker-dealer capital requirement and their consolidated BHC capital requirement applicable to the broker dealer's assets, but Credit Suisse's IHC would be precluded from drawing on the excess capital of its parent FBO. The resulting disparity is discriminatory and would clearly place Credit Suisse at a competitive disadvantage relative to its peers.

Thus, U.S. BHCs today are subject to two primary levels of capital requirements: one at the legal entity and the other at the consolidated level. If the Proposed Rule is adopted, a large FBO would be subject to *three* levels of restriction: the existing requirements at the legal entity and the global consolidated level, and an additional, third requirement at the IHC level that likely will operate as the binding constraint.

To put this in perspective, if the intent of the Proposed Rule is to impose bank capital requirements on larger broker-dealers owned by FBOs, then those same requirements should apply in the same way to larger broker-dealers owned by U.S. BHCs. Truly comparable national treatment under the Proposed Rule would require a U.S. BHC to establish an IHC to own only its broker-dealer, with BHC capital requirements then extending directly to that broker-dealer in the same way that the Proposed Rule would apply them to an FBO-owned broker-dealer—with no ability to draw on excess capital of the consolidated U.S. BHC to meet those IHC requirements. While Credit Suisse does not advocate this balkanized extension of bank capital requirements to broker-dealers owned by either U.S. BHCs or FBOs, we submit that extending them in the same way to both types of organizations would be the only fair way to do so consistent with the national treatment principle.

B. Single Counterparty Credit Limits

The SCCL requirement of the Proposed Rule also discriminates against FBOs because it is based on a percentage of an institution's capital. For IHCs, the SCCL is based on a percentage of the IHC's capital; the SCCL does not take into account an FBO's global capital. For U.S. BHCs, by contrast, the SCCL is based on a percentage of the global consolidated capital of the entire BHC. Because an IHC is by definition smaller than the overall BHC, the SCCL applicable to an IHC would be smaller as well. This more restrictive SCCL for an FBO's IHC is unwarranted because the global consolidated capital of the parent FBO stands behind the IHC.

Moreover, if an IHC breaches its SCCL with respect to a particular counterparty, the Proposed Rule includes a cross-trigger provision that would prevent additional credit exposure to that counterparty by *any* of the FBO's U.S. operations—not just the IHC, but its branch or agency network as well.[37] In contrast, because the subsidiaries of a U.S. BHC are not individually subject to the SCCL, there is no subsidiary credit exposure limit that, if breached, would trigger the imposition of limits on affiliates in that holding company. Again, this effect of the Proposed Rule is discriminatory, and it also makes little sense: if such limits are to be imposed, they should apply separately and independently to the part of the organization that breaches the limits, without a "cross-default" provision that restricts credit extensions by a different part of the organization.

Finally, just as the SCCL would become much more restrictive due to the smaller size of the IHC relative to the consolidated FBO, the same would be true of trading limits more generally. Today, as a matter of prudent risk management, trading limits for U.S. operations are based on the overall size and strength of a consolidated FBO and not on the smaller size of its U.S. operations, just as an FBO's lending limit is based on the size and strength of the consolidated bank and not on the much smaller base of its U.S. branch. The Proposed Rule would undercut this principle by effectively tying U.S. trading limits to the size of the IHC silo. Such a result would needlessly reduce the ability of FBOs to engage in U.S. trading activities, thereby penalizing FBOs and reducing needed competition in U.S. trading markets. In addition, having to comply with two separate trading limits would be a costly and burdensome requirement that would be entirely unnecessary for sound global risk management—and would also be discriminatory because U.S. firms would only be subject to one such requirement.

V. The proposed IHC requirement fails to take into account "whether the [FBO] owns an insured depository institution," a key distinction recognized in Dodd-Frank.

Credit Suisse does not control a U.S. insured depository institution. It is subject to the proposed enhanced prudential standards solely because it has an uninsured branch in the U.S. But the Proposed Rule does not take this fact into account, even though section 165 of the Dodd-Frank Act, in the analogous context of establishing enhanced prudential standards for companies designated as systemically important by FSOC, requires the Federal Reserve to "take into account differences . . . based on . . . whether the company owns an insured depository institution . . . ."[38]

Whether an FBO "owns an insured depository institution" is the same type of meaningful distinction that should be recognized with respect to enhanced prudential standards applied to FBOs generally. Companies that own an insured depository institution obtain a significant benefit from the U.S. federal deposit insurance system that helps them raise capital and liquidity. But such companies' funding comes at a cost—they are also more subject to moral hazard and systemic risk due to their demand deposit funding structure. Because Credit Suisse does not rely on the U.S. federal deposit insurance system, it is less subject to such risks. In

[37] 77 Fed. Reg. 76,693 (proposed 12 C.F.R. § 252.245(c)).

[38] 12 U.S.C. § 5365(b)(3)(A)(ii).

addition, companies that control an insured depository institution are subject to the Collins Amendment. By contrast, an FBO like Credit Suisse, which does not control an insured depository institution, is not. The Proposed Rule does not take any of these distinctions into account.

This aspect of the Proposed Rule—applying host country banking requirements to an FBO's local operations that do not involve a bank subsidiary operating in that country—is also flatly inconsistent with international practice. The Proposed Rule requires an FBO to form an IHC subject to U.S. *bank* holding company requirements, regardless of whether the FBO owns a U.S. bank subsidiary. As a result, the IHC of an institution such as Credit Suisse, which does not own a U.S. bank subsidiary, would be subject to U.S. BHC regulatory requirements, including capital requirements. Where an FBO does not operate a bank subsidiary in a host country, Credit Suisse is unaware of any other country in the world that, through ring-fencing, subjects the FBO's nonbanking operations in that country to local banking regulation.

Consequently, the Proposed Rule should be modified to recognize that U.S. BHC requirements should not be applied rigidly to a non-U.S. BHC FBO solely due to the fact that such an FBO has a branch or agency in the U.S. Such companies do not present the same policy concerns as FBOs that own U.S. insured depository institutions, and the rule should be adjusted accordingly.

VI. An FBO's IHC would be subject to overlapping but different standards imposed by the U.S. and its home country—often for the same purpose and to implement the same international standards—resulting in substantial additional costs that will produce little additional benefit.

Most FBOs are subject to the same or similar consolidated capital requirements—both risk-based capital and leverage ratios—that the Proposed Rule would impose separately on IHCs. For example, FINMA subjects Credit Suisse to the same Basel III capital and liquidity regime that would apply to a Credit Suisse IHC, with the same requirement to comply with the models-based "Advanced Approaches" for calculating risk-weighted assets. FINMA also imposes the so-called "Swiss finish" of additional capital requirements that are not only more stringent than Basel III, but in some cases are significantly more stringent than U.S. BHC capital requirements—especially with respect to required levels of contingent capital.[39] Under the Swiss regime, Credit Suisse is also subject to rules and supervisory requirements applicable to consolidated stress testing and consolidated risk management.[40] All of these extensive Swiss requirements apply not just to the parent FBO, but also to Credit Suisse's U.S. operations, including the nonbanking operations that would be segregated in an IHC under the Proposed Rule. As is true for U.S. firms complying with the U.S. regulatory regime, the costs of complying with the Swiss regime are very substantial—and appropriately so—to ensure that Credit Suisse conducts its global operations in a safe and sound manner.

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[39] *See* Appendix 1.

[40] *See id.*

A fundamental concern with the Proposed Rule is that it would require firms like Credit Suisse to develop a substantial and expensive new capital calculation regime for its U.S. IHC that would largely replicate its home country regime—even though both regimes are intended to achieve the same prudential goals. For example, while the complex and labor-intensive regime of the Basel Advanced Approaches has been adopted in both Switzerland and the United States, the capital calculation methodology for doing so can differ significantly with respect to model approvals, reporting, systems, and many other requirements. Similarly, the U.S. stress testing regime that would apply solely to the IHC would differ significantly from the Swiss stress testing regime that applies to Credit Suisse's consolidated operations. And the requirement for a new silo of risk management and governance at only the IHC—with differences in risk governance, risk officers, reporting, limits, and value-at-risk models—would impose very substantial costs, as would the required enhancements to infrastructure, systems, and software.

Moreover, the Proposed Rule's IHC regime would substantially overlap not just with existing requirements at the consolidated foreign parent level, but also with requirements at the U.S. broker-dealer level. In Credit Suisse's case, its U.S. broker-dealer is currently planning to apply to become subject to the SEC's alternative net capital rule, which also involves the use of internal models to calculate capital requirements. As a result, the Proposed Rule could impose a third, complex capital regime on U.S. operations that are already or will likely be subject to two other such regimes.

Indeed, Credit Suisse estimates that implementing these new regulatory systems, models, and other changes would cost over *$50 million annually*—additional costs that U.S. banking organizations would not incur in their foreign operations. Moreover, a recent independent study by Oliver Wyman, a management consulting firm, estimates even higher initial costs of up to $250 million for major broker-dealers.[41] Because many other FBOs would need to incur similarly substantial expenses if the IHC proposal were implemented, the system-wide cost would be that much greater. While Credit Suisse is willing to invest resources to improve compliance and safety and soundness, we strongly believe that these costs are unnecessary where they would parallel similar, and sometimes more stringent, requirements by home country regulators and the SEC.

Moreover, we believe that the resources and costs to U.S. regulators of implementing such an overlapping regime would also be very substantial. Because regulatory resources are already stretched with the substantial new responsibilities imposed by Dodd-Frank, implementation of the Proposed Rule would unnecessarily strain these already limited resources even further. Accordingly, we believe that there would be real benefits to U.S. regulators—and the entire supervisory process—to leverage the substantial overlapping resources already devoted to the implementation of similar regulations by foreign regulators.

[41] Oliver Wyman, Enhanced Prudential Standards for Foreign Banking Organizations: An Impact Assessment 17, 19 (April 30, 2013); *see also id.* at 19 (summarizing the major drivers of operational costs).

VII. The IHC proposal ring-fences excess capital and liquidity, which will balkanize global finance and increase systemic risk.

Rather than achieving the intended goal of reducing systemic risk, the IHC ring-fencing proposal could very well have the opposite effect, for several reasons. First, excess capital and liquidity trapped in the IHC could not be readily re-deployed to FBO operations experiencing stress in another country. Consequently, a parent FBO would be discouraged from holding anything above the minimum required levels of capital and liquidity in the IHC based on real concerns about the ability to move funds outside the U.S. in times of economic stress —thereby potentially weakening the overall strength of the IHC.[42]

Second, private market participants, recognizing the increased risk posed by locally ring-fenced funds, would be less willing to provide capital or liquidity to the parent FBO in times of stress. As a result, both a troubled subsidiary outside the U.S. and the consolidated FBO could be more susceptible to confidence issues and liquidity pressures, with an increased potential for contagion of problems to third parties.

Third, trapping liquidity in an IHC (both in the U.S. and any other jurisdiction that adopts a comparable ring-fencing proposal) would restrict the ability of an FBO to address potential issues using its own resources. This could put increasing pressure on lenders of last resort to provide emergency liquidity funding on a more frequent basis.

Fourth, the parent FBO and its home country supervisor could be encouraged to believe that they are relieved from the responsibility of providing additional resources to a distressed IHC because of the capital and liquidity that is already trapped in the U.S. Thus, what would and should have been a parent FBO's responsibility or a home country's responsibility would be transformed into a U.S. responsibility.

Fifth, and more broadly, the Proposed Rule could be interpreted to mean that the U.S. government believes that FBOs and foreign governments should no longer be trusted to provide adequate support for distressed operations in host jurisdictions. Such a "go it alone" signal from the United States could very well encourage other countries to take similar actions to ring-fence capital and liquidity in their own jurisdictions—measures that would further impede the efficient flow of capital and liquidity to where it is most needed.

VIII. The IHC ring-fencing proposal undercuts existing and future international efforts to cooperate and develop credible cross-border resolution regimes.

Credit Suisse does not take issue with the usefulness for resolution purposes of having an FBO establish a U.S. holding company to hold U.S. subsidiaries. Our concern is with subjecting that holding company to full BHC regulation, especially with respect to trapping capital. That is, by preemptively ring-fencing capital in the United States, the proposed IHC appears to be based on the assumption that the U.S. cannot rely on FBO support or foreign government cooperation with respect to cross-border resolution. Such unilateral action,

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[42] *See id.* at 27-28.

however, is fundamentally at cross-purposes with the critical need for international cooperation, information exchange, and trust to develop a robust cross-border resolution regime.[43]

For instance, in the *Key Attributes of Effective Resolution Regimes for Financial Institutions*, the FSB identified resolution planning and cross-border cooperation agreements as key ways to address the risks of cross-border failures. In particular, home and host jurisdictions should "duly consider[] the potential impact of their resolution actions on the financial stability of other jurisdictions" and share information to "help prepare for a coordinated resolution of the whole firm."[44] Likewise, the FDIC and Bank of England suggested in a recent joint paper that the "single point of entry" and "bail-in" approaches to resolution depend fundamentally on host country regulators *not* taking actions to ring-fence local operations of a foreign bank that fails.[45] FINMA, the Swiss supervisor of Credit Suisse, also has moved away from the "lifeboat" concept of preemptive ring-fencing, and instead has embraced a "single point of entry" global resolution strategy that depends fundamentally on global cooperation among governments. Indeed, Mark Branson, head of the banks division at FINMA, emphasized that FINMA "would not want to see a fragmentation" because "the global community is tending towards the single point of entry, which we support."[46]

Rather than ring-fence capital and liquidity within national boundaries, host country regulators should be able to rely on and trust the home country regulator to take steps to ensure that the resolution process results in necessary capital and liquidity flowing to local operations in the host jurisdiction. Indeed, "[f]urther progress on these cross-border challenges will require significant coordination among U.S. regulators and the key foreign central banks and supervisors for the largest financial firms."[47]

In this context, the IHC proposal appears to be a unilateral step in the opposite direction. By preemptively ring-fencing local operations in advance of resolutions, the proposal sends the message that the U.S. does not trust foreign governments and FBOs to cooperate and provide support to U.S. operations in times of stress. That message weakens the incentive for

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[43] *See, e.g.*, Financial Stability Board, *Key Attributes of Effective Resolution Regimes for Financial Institutions* 3 (Oct. 2011) (providing that any effective resolution regime should "provide a mandate in law for cooperation, information exchange and coordination domestically and with relevant foreign resolution authorities before and during a resolution"); International Monetary Fund, *Resolution of Cross-Border Banks—A Proposed Framework for Enhanced Coordination* 5 (June 11, 2010) ("[A] resolution framework will be ineffective unless it is accompanied by a robust cross-border coordination mechanism.").

[44] *Key Attributes*, at 22.

[45] *See* Bank of England & Federal Deposit Insurance Corporation, *Resolving Globally Active, Systemically Important, Financial Institutions: A Joint Paper* (Dec. 10, 2012).

[46] *See, e.g.*, Duncan Wood, Q&A: Mark Branson on the Too-Big-To-Fail Problem, Modelling, and Basel III, RISK (March 25, 2013) (quoting Mark Branson, head of the banks division at FINMA).

[47] Speech by Jerome H Powell, Member of the Board of Governors of the Federal Reserve System, to the Institute of International Bankers 2013 Washington Conference (March 4, 2013), *available at* http://www.bis.org/review/r130305b.pdf.

other countries to achieve multilateral and bilateral cross-border resolution regimes,[48] and importantly, weakens the incentive for other countries to implement the FSB's *Key Attributes of Effective Resolution Regimes for Financial Institutions*. Indeed, the IHC proposal could have the unintended effect of encouraging foreign governments and their banks *not* to support the U.S. subsidiaries of FBOs because it signals that the U.S. has preemptively trapped all the capital and liquidity it will need in the context of a resolution. Conversely, the IHC proposal could encourage the U.S. government to focus solely on U.S. operations rather than participate in a global resolution that addresses systemic risks at the global level. At a time when so much recent progress has been made toward effective cross-border resolution that depends on cooperation and mutual interest among governments, we believe that unilateral and preemptive ring-fencing would be the wrong signal for the U.S. government to send.

IX. The Proposed Rule interferes with home country regulators' ability to regulate their own institutions.

The early remediation requirement of the Proposed Rule could have significant extraterritorial effects because its triggers are based on risk-based and leverage capital ratios at the IHC *and* the parent FBO level. Under the proposed early remediation regime, the U.S. operations of a large FBO would be subject to automatic remedial measures if either the IHC *or the parent FBO* falls below (1) a risk-based capital ratio that is higher than the applicable minimum required risk-based capital ratio (an extra buffer of as much 2.5 percent of risk-weighted assets); or (2) a leverage ratio that is higher than the applicable minimum required leverage ratio (an extra buffer of as much as 1.25 percent of non-risk-weighted assets). With the addition of these "early remediation buffers," an FBO would be effectively required to maintain a common equity tier 1 ratio of as much as 7 percent and a leverage ratio of as much as 4.25 percent. The early remediation buffer for risk-based capital would not effectively increase an FBO's required risk-based capital ratio because of the capital conservation buffer applicable under Basel III. But the early remediation buffer for leverage capital would be much more consequential: it would effectively impose a significantly higher leverage ratio than is required under Basel III—4.25 percent versus 3 percent—because the capital conservation buffer does not apply to the leverage ratio.

Thus, as proposed, the parent FBO would be compelled to maintain an additional "buffer" above the internationally agreed leverage ratio in order to avoid the imposition of adverse remedial sanctions on its U.S. operations—or, in other words, the U.S. would effectively be establishing a new and higher consolidated capital requirement for foreign-headquartered banking organizations that do business in the United States. This extraterritorial exercise of bank supervisory power is extraordinary: based on the threat of U.S. sanctions, it could result in the Federal Reserve effectively requiring a consolidated FBO to hold more consolidated capital for its global operations than is required by the Basel Agreements or by the home country supervisor. Moreover, such a result would be fundamentally at odds with Congress's direction in

[48] *See* Duncan Wood, Q&A: Mark Branson on the Too-Big-To-Fail Problem, Modelling, and Basel III, RISK (March 25, 2013) ("The resolution framework will help determine how fragmented things become. If we don't make progress there, then the only rational response is to ensure each local entity of importance is resilient enough on its own. So we have to make progress.") (quoting Mark Branson, head of the banks division at FINMA).

Dodd-Frank to take into account comparable home country standards applicable to the FBO. And, this additional early remediation buffer would be required in foreign jurisdictions without any consultation with the foreign supervisor. If the tables were turned, it is hard to believe that the U.S. would think it a good idea for a foreign banking supervisor to impose similar sanctions on a U.S. BHC operating in a foreign jurisdiction that was in compliance with all U.S. capital requirements.

X. The Proposed Rule should be substantially modified to take into account an FBO's comparable home country standards so that the IHC requirement does not automatically apply to all large FBOs, and the extraterritorial application of capital requirements should be eliminated.

For the reasons described above, the Proposed Rule should be substantially modified, especially the IHC requirement. As required by Dodd-Frank, U.S. enhanced prudential standards applicable to FBOs should be tailored to take into account the extent to which comparable standards are imposed by the FBO's home country. Where such comparable home country standards apply, the IHC requirement should not apply (or should be substantially modified), especially where the FBO does not operate a banking subsidiary in the U.S. and therefore is not a U.S. BHC. In such circumstances, the U.S. would continue to rely on the strength of the parent FBO and on the cooperation of the FBO's home country supervisor to support U.S. subsidiaries in times of stress—just as the Proposed Rule recognizes would be the case for branches and agencies of the FBO.

The challenges posed by such a country-by-country review of standards should be manageable, especially with the heightened focus of the Basel Committee on comparability reviews for capital, liquidity, and other prudential standards.[49] Supervisory colleges and the resolution planning process applicable to FBOs would provide other tools to make the necessary assessments and address supervisory gaps. Moreover, the Federal Reserve has experience with precisely this type of individual country review from its process for determining whether a particular country satisfies the statutory standard for "Comprehensive Consolidated Supervision."[50] And of course, Dodd-Frank expressly requires the agency to take into account comparable home country standards, even if that does pose challenges.

Finally, the Proposed Rule should be modified to eliminate the Federal Reserve's extraterritorial early remediation authority to effectively establish a new consolidated leverage capital requirement for an FBO in contravention of capital requirements established by the FBO's home country supervisor and internationally agreed standards. It is inappropriate and unnecessary to impose sanctions on the U.S. operations of an FBO where the consolidated parent more than complies with international capital standards with which the United States has agreed.

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[49] *See, e.g.*, Basel Committee on Banking Supervision, Basel III Regulatory Consistency Assessments (Level 2), http://www.bis.org/bcbs/implementation/l2.htm.

[50] *See* 12 U.S.C. §§ 1842(c)(3)(B), 3105(d)(2)(A).

XI. If, despite comments to the contrary, the Federal Reserve chooses to include the IHC requirement for all large FBOs, it should make adjustments to achieve its objectives in a more effective and less burdensome way.

If the Federal Reserve decides to maintain the IHC requirement, then Credit Suisse strongly believes that the following adjustments should be made to reduce the cost and burden of the Proposed Rule without undermining its important prudential goals.

First, an FBO, rather than trapping equity in an IHC, should be allowed to meet any capital requirement through other instruments, including debt investments in the IHC that can be written down or converted to equity in the event the Federal Reserve determines the IHC is insolvent or no longer viable. Like equity, such debt obligations would ensure an FBO's ability and willingness to pay in times of loss and economic stress for its U.S. subsidiaries. The Federal Reserve could work with home country supervisors to determine viability standards that trigger principal write-down to absorb losses. Or, as an alternative, the FBO could enter into a "keep-well" contractual obligation with the IHC (or agree to a similar form of parental guarantee) to provide support as needed in times of stress. Both such concepts would be far less costly to the parent FBO, while at the same time offering the type of guaranteed financial support that ring-fenced equity would provide.

Second, any final rule should be clarified to increase the Federal Reserve's flexibility to permit alternative organizational structures to satisfy the IHC requirement. Credit Suisse strongly supports the provision in the Proposed Rule that would allow an FBO to establish "multiple intermediate holding companies or use an alternative organizational structure to hold its combined U.S. operations, if . . . [t]he Board determines that the circumstances . . . warrant an exception based on the [FBO's] activities, scope of operations, structure, or similar considerations."[51] Given the structural diversity of FBOs that is expressly recognized in the Proposed Rule,[52] such discretion to recognize alternative organizational structures is critically important—both for multiple IHCs as well as for other organizational structures that appropriately differ from the Proposed Rule's presumptive IHC requirement.

We are concerned, however, with the language in the preamble to the Proposed Rule stating that such authority would be exercised only in "exceptional circumstances,"[53] which could be interpreted as establishing an excessively high threshold for the exercise of such authority. For that reason, we believe that language should be included in any final rule clarifying that it is expected that this authority could well be exercised in a range of situations to recognize the diversity of FBO structures without undermining key objectives of the regulation.

For example, we believe that an FBO should be permitted to have a U.S. holding company above the IHC (that is not itself an IHC) where adverse tax, accounting, or other

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[51] 77 Fed. Reg. 76,680 (proposed 12 C.F.R. § 252.202(a)).

[52] *See id.* at 76,629 (recognizing that "the current population of foreign banking organizations is structurally diverse").

[53] *Id.* at 76,638.

consequences could be significantly mitigated with an additional corporate layer, and the non-IHC top U.S. holding company is not an operating company and does not directly or indirectly hold interests in operating companies outside of the IHC or have dealings with counterparties other than affiliates. So long as the IHC holds all the necessary capital and liquidity to support the operating subsidiaries as required by the Proposed Rule, the presence of an additional U.S. holding company above the IHC would not undermine the policy objectives of the proposal, but it would avoid substantial restructuring costs that could otherwise result. Permitting a non-IHC top-tier U.S. holding company would be especially warranted where, as is the case with Credit Suisse, none of the U.S. subsidiaries is a depository institution and therefore the non-IHC top-tier U.S. holding company would clearly not be a U.S. BHC.

Similarly, U.S. entities that are currently consolidated into the parent FBO under Generally Accepted Accounting Principles ("GAAP"), rather than into a U.S. holding company, also should be consolidated into the parent FBO for regulatory purposes. Thus, for example, non-operational asset finance vehicles that are consolidated into the FBO for GAAP purposes should not be consolidated into the FBO's IHC. This type of organizational arrangement would not undermine the goals behind the Proposed Rule, but it would avoid substantial costs FBOs could incur to restructure their operations in accordance with the IHC requirement.

In addition, Credit Suisse believes that the Federal Reserve should maintain the discretion not to require an IHC to hold any non-operational U.S. subsidiary that does not pose systemic risk to U.S. financial stability. Discretion to exempt such subsidiaries would mitigate significant tax burdens and organizational inconsistencies, and importantly, would not pose financial stability concerns because the subsidiary would be regulated by functional regulators and would not be systemically important.

Third, the Proposed Rule should be modified to permit an IHC to comply with any final rule by using the version of the Advanced Approaches implemented in its home country. Thus, the IHC would be required to comply with the same Basel III capital requirements as U.S. BHCs, but it would do so using the models and systems used by its consolidated FBO parent in compliance with home country standards. If necessary, the Federal Reserve could condition its reliance on home country standards on a country-by-country analysis of the rigor of such standards. This tailored approach would be much more consistent with the statutory requirement to take into account comparable home country standards, would achieve the same prudential objectives as the current IHC proposal, and would substantially reduce the very high cost of implementing the Advanced Approaches. Indeed, in Credit Suisse's case, this modification to the Proposed Rule alone would save tens of millions of dollars each year, and would also save the Federal Reserve substantial oversight resources as well.

Fourth, and relatedly, an IHC should not be treated as a new silo with respect to governance and counterparty limits that are separate from those required for the consolidated parent FBO or for the U.S. broker-dealer subsidiary. Such separate silo requirements are costly and unnecessary because they do not adequately take into account either the consolidated strength of the parent or the strengths of the broker-dealer regulatory regime that are expressly tailored to the activities of broker-dealers, which are quite different from the activities engaged in by banks.

Fifth, while we understand the policy rationale for requiring liquidity at the host country level to avoid certain stress events, any final rule should make clear that excess liquidity above the minimum amounts required should be permitted to flow freely outside of the U.S. to address needs in other parts of an FBO's operations.

Finally, to the extent that a substantially higher leverage ratio would be imposed on the IHC than would otherwise be required, that requirement should be phased in over time consistent with the Basel III timetable for phasing in the international leverage ratio.

Credit Suisse believes that all of these types of tailored measures would take into account home country standards, avoid discrimination, and reduce unnecessary and costly burdens—yet still satisfy the prudential objectives of the IHC.

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We appreciate your consideration of our comments on the Proposed Rule and our suggestions on how to implement the enhanced prudential standards in a more tailored, flexible manner. Should you have any questions, please contact myself, Lewis Wirshba, Chief Operating Officer, Americas at 212-325-2000, or Joseph Seidel, Head of Public Policy, Americas at 202-626-3300.

D. Wilson Ervin

Credit Suisse
Vice Chairman
Group Executive Office

Appendix 1
Comparison of U.S., International, and Swiss Enhanced Prudential Standards

U.S. Standard	International Standard	Comments on International Standard	Swiss Standards for Systemically Important Banks
Risk-Based Capital and Leverage	Basel Committee on Banking Supervision, *Basel III, A Global Regulatory Framework for More Resilient Banks and Banking Systems* (June 2011), *available at* http://www.bis.org/publ/bcbs189.htm. Basel Committee on Banking Supervision, *Global Systemically Important Banks: Assessment Methodology and the Additional Loss Absorbency Requirement* (Nov. 2011), *available at* http://www.bis.org/press/p111104.htm. Basel Committee on Banking Supervision, *A Framework for Dealing with Domestic Systemically Important Banks* (Oct. 2012), *available at* http://www.bis.org/publ/bcbs233.htm.	The Basel Committee on Banking Supervision ("BCBS") has promulgated several standards relating to risk-based capital and leverage requirements; we note three of particular importance: (i) the Basel III framework, which applies to all "internationally active" banking organizations, and separate frameworks establishing capital surcharges for (ii) "global" and (iii) "domestic" systemically important banks.	Basel III risk-based capital and leverage ratio requirements were implemented in Switzerland effective January 1, 2013 alongside incremental requirements applicable to Swiss systemically relevant banks under the Swiss "too big to fail" ("TBTF") legislation. **Risk-based capital** requirements for Swiss systemically important banks exceed the requirements applicable to global systemically important banks ("G-SIBS"). Credit Suisse Group is, for example, required to hold 10% of risk-weighted assets ("RWA") in Common Equity Tier 1 ("CET1") (versus 8.5% for Basel G-SIBS) and an additional 9% of RWA in the form of contingent capital or other qualifying capital once the Swiss requirements are fully phased-in in 2018. *See* Swiss Capital Ordinance ¶¶ 128–30. Since January 1, 2013, Credit Suisse Group also has complied with a **leverage ratio** applicable to Swiss systemically important banks, which is designed on the basis of the Basel III. The leverage ratio requirement amounts to 4.3% once it is fully effective in 2018. *See* Swiss Capital

U.S. Standard	International Standard	Comments on International Standard	Swiss Standards for Systemically Important Banks
			Ordinance ¶¶ 133–35.
Debt-to-Equity Limit	N/A.	The debt-to-equity limit is required specifically under section 165(j) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), and it does not appear to be based on an international standard. This may be because the debt-to-equity limit is similar to the leverage ratio.	Swiss standards for systemically important banks do not require a debt-to-equity limit should a bank pose a grave threat to the financial stability of Switzerland. However, as part of the Swiss TBTF legislation, progressive capital requirements are determined based on a company's size and market share of domestic systemically important business (without any upper limits applying). As such, the Swiss laws already applicable to Credit Suisse Group achieve a similar goal and have a similar effect as the proposed FBO debt-to-equity limitations based on systemic risk. *See* Swiss Capital Ordinance ¶ 130. The Financial Market Supervisory Authority ("FINMA") may impose additional capital requirements to the existing minimum and buffer requirements should available capital be deemed insufficient in relation to business activities, risk exposures, strategies, quality of risk management, or sophistication of management techniques. *See* Swiss Capital Ordinance ¶ 45.

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Stress Testing	Basel Committee on Banking Supervision, *Principles for Sound Stress Testing Practices and Supervision* (Jan. 2009), *available at* http://www.bis.org/publ/bcbs155.htm.	The U.S. has established a stress testing framework that restricts the ability of large banking organizations to return capital to shareholders in the event of adverse stress test results. This approach appears to be more prescriptive than that contemplated by the Basel *Principles for Sound Stress Testing*. While the *Principles for Sound Stress Testing* contemplate that stress test results will influence a banking organization's capital planning processes, it does not appear to recommend explicitly that stress test results should determine whether a banking organization may return capital to shareholders.	The Swiss regulators' approach to Basel Pillar 2 rules has followed a conservative and robust implementation with a 100% capital buffer add-on to Basel Pillar 1 requirements. Two complementary approaches to stress testing are used: Building Block Approach ("BBA") and Loss Potential Analysis ("LPA"). **BBA** has pre-defined stress testing blocks covering market, credit, business, and funding risks providing information on stressed exposure, profit and loss, and RWA. **LPA** is a multi-year stress testing calibrated by FINMA and adapted to the bank's view of most significant areas of risk. The severity of shocks is specified in terms of a global macroeconomic scenario determined by FINMA and the Swiss National Bank ("SNB"). Historical calibration and comparison to other regulators were used in the design of the LPA with the aim to set an "above average" severity.
Liquidity	Basel Committee on Banking Supervision, *Basel III: The Liquidity Coverage Ratio and Liquidity Risk Monitoring Tools* (Jan. 2013), *available*	The BCBS has finalized the Liquidity Coverage Ratio ("LCR"), but work on a final Net Stable Funding Ratio ("NSFR") remains ongoing.	An LCR-type requirement has been in place for the large Swiss banks since March 31, 2010 (based on a bilateral agreement between FINMA and Credit Suisse). LCR will be implemented for all

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	at http://www.bis.org/publ/bcbs238.htm.		Swiss banks on January 1, 2015, with formal observation reporting as of second quarter 2013. NSFR has been reported to FINMA on a monthly basis (as with the LCR) since first quarter 2012 based on proposed Basel III. Switzerland is also planning to implement the NSFR as per the initial BCBS timeline of January 1, 2018, but it is currently awaiting further guidance from BCBS on this as well as on additional supervisory monitoring tools.
Single-Counterparty Credit Limits	Basel Committee on Banking Supervision, *Supervisory Framework for Measuring and Controlling Large Exposures* (Mar. 2013), *available at* http://www.bis.org/publ/bcbs246.htm.	The Basel Framework for measuring and controlling large exposures is still in proposed form, and as currently drafted, is similar to the single counterparty credit limit rules under section 165 of Dodd-Frank but more stringent in certain respects.	Switzerland already has minimum standards for single counterparty credit limits similar to the requirements outlined in the Basel Consultative Document of March 2013. These so-called Swiss large exposure standards have been in place for a number of years and have been tightening for systemically relevant banks as of January 1, 2013. *See* Swiss Capital Ordinance ¶¶ 95, 136.
Risk Management and Risk Committee	Financial Stability Board, *Thematic Review on Risk Governance* (Feb. 12, 2013), *available at* http://www.financialstabilityboard.org/publications/r_130212.pdf.	The Thematic Review is primarily a survey of risk management practices across jurisdictions, but it also contains recommendations that track aspects of the domestic standards under section 165 of	FINMA Circular 08/24 sets guidelines for corporate governance, the supervision of business activities and internal control, and the supervision thereof by the responsible function in banks, securities

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		Dodd-Frank (*e.g.*, risk committee and chief risk officer).	dealers, financial groups, and financial conglomerates mainly engaged in banking. It describes in detail the roles and responsibilities of the Board of Directors ("BoD"), the BoD Audit Committee, Internal Audit, and Management. Neither the Swiss Banking Law, Ordinance, or FINMA Circulars contain a formal requirement to install a BoD Risk Committee. However, from a risk governance best practice point of view the installation of a BoD Risk Committee is indispensable. FINMA Circular 08/24 explicitly requests that the institution designates one member of the management to be responsible for risk control and thus guarantees unrestricted access of the risk control to the management. It further describes the duties and responsibilities of risk management. The risk governance of Credit Suisse has changed through: 1. Implementation of a Risk Appetite Framework; 2. Enhanced focus on stress testing and forward looking scenarios; 3. Strengthened control culture with a

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			holistic bank-wide program; 4. Convergence of Risk Committee and Audit Committee of the Board of Directors: In order to improve the coordination between the Audit Committee and the Risk Committee, the Chairman of the Audit Committee became a member of the Risk Committee and vice versa; and 5. Stronger focus on Legal Entity governance.
Early Remediation	Financial Stability Board, *Key Attributes of Effective Resolution Regimes for Financial Institutions* (Oct. 2011), *available at* http://www.financialstabilityboard.org/publications/r_111104cc.pdf. Financial Stability Board, *Recovery and Resolution Planning: Making the Key Attributes Operational* (Consultative Document) (Nov. 2012), *available at* http://www.financialstabilityboard.org/publications/r_121102.pdf.	The Financial Stability Board's ("FSB") *Key Attributes* framework contemplates that systemically important financial institutions will engage in "recovery planning," pursuant to which the financial institution would take specific actions prior to insolvency (*e.g.*, raise capital or sell subsidiaries) based on pre-determined quantitative and qualitative triggers. This recovery planning framework is similar to the early remediation requirements under section 165 of Dodd-Frank.	Swiss legislation enshrines in national law the FSB guidelines on developing institution-specific recovery and resolution plans. Switzerland began revising its supervisory law in 2008, anticipating the FSB proposals for global systemically important financial institutions adopted by the G-20 in 2011. Two revisions of the Banking Act envisage improvements to the restructuring provisions for all banks and organizational requirements for SIBs. One of these is the depositor protection proposal of March 18, 2011, which came into force on September 1, 2011; the other is the TBTF proposal for enhancing the stability of the financial sector, dated September 30, 2011, which came into force on March 1, 2012.

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			At the ordinance level, the Banking Ordinance, the Capital Ordinance, and the FINMA Bank Insolvency Ordinance have come into force. The Federal Act on the Swiss Financial Market Supervisory Authority (or Financial Market Supervision Act, "FINMASA") gives FINMA the broadest power and measures to ensure the restoration of compliance with any financial market act if there are any irregularities, including audits, decrees, confiscation, investigations or revocation of license. *See* FINMASA, art. 24–37. By decree FINMA can impose limitations of bonus payments, dividend payments or capital measures.