



# BANQUE DE FRANCE

EUROSYSTEME

LE GOUVERNEUR  
PRÉSIDENT  
DE L'AUTORITÉ DE CONTRÔLE PRUDENTIEL

Paris, 7 May 2013

**Subject: Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies**

Dear Chairman,

As Chairman of the *Autorité de contrôle prudentiel* ("ACP"), I am writing to share my strong concerns regarding extraterritorial and potential negative effects attached to the proposal related to the implementation of the Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies pursuant to sections 165 and 166 of the the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA). The issue has already been raised recently by the EU Commissioner in charge of the Internal Market and Services, Michel Barnier<sup>1</sup>, and some of my distinguished European<sup>2</sup> counterparts, with whom I am in full agreement.

I do understand and acknowledge the purpose of the proposed reform aiming to strengthen and improve the prudential supervision of the Foreign Banking Organizations (FBO) whose activities are significant to the U.S. financial system. I also welcome the fact that the U.S. proposal refers, in a number of areas, to international banking standards, most notably Basel III, established by the Basel Committee on Banking Supervision, and that the proposal shows the US intent to implement them. Consistent with the G20 objectives, this will contribute to a sound and harmonized prudential framework. As you know, an agreement on the implementation of the Basel III in 2014 has been recently reached in the European Union.

Mr. Ben BERNANKE  
Chairman  
FEDERAL RESERVE BOARD  
C Street  
Eccles Board Building  
WASHINGTON DC 20551

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<sup>1</sup> See Letter, 18 April 2013.

<sup>2</sup> See Letter of the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) and the Deutsche

However, I must confess my serious discomfort regarding some elements of this proposal, its potential consequences on French banks and also on U.S. markets.

First, the proposal seems contrary to the historical construction of the cross-border prudential supervision and represents a significant departure from existing supervisory practices. Without questioning the responsibilities and duties of all supervisors involved in the supervision of cross-border banking groups, there is no doubt that consolidated supervision at the highest level is of paramount importance to properly and comprehensively assess such groups. This is especially true for the largest and most complex groups which would fall under the proposal. Several key components of the G20 reform agenda like the Basel III agreement or the specific rules for SIFIs, would be seriously weakened if the proposal is implemented in its current form. In this regard, I am worried by the fact that the U.S. proposal does not take into account in a sufficient manner the role and potential support from foreign parent companies, the capital and liquidity available in other parts of the group and more generally the organisation and functioning of the groups. The consolidated supervision of the parent company should be taken in consideration before determining, without any distinction, that intermediate holding company ("IHC") shall be subject to U.S. capital, liquidity and other DFA's enhanced prudential standards on a consolidated basis.

Secondly, having in mind the current treatment of U.S. banks in Europe, which benefits from the recognition of the equivalence of the U.S. supervision, the Fed proposal would lead to asymmetrical treatment as regards to the principle of consolidated supervision. While the objective of taking into account the consolidated supervision is clearly stated, the proposal would undermine it. This can have very negative consequences on FBOs operating in the U.S. and on the level playing field. On top of domestic costs which would be incurred by the FBOs, the proposal currently envisaged could lead to a potential fragmentation of markets, institutions and, consequently, supervision. I would caution against a too direct and mechanistic application at sub-consolidated level of rules initially developed for application at the consolidated level, without due consideration of the group's dimension. In practice, this may result from a competition point of view in treating differently FBOs and US banking groups.

Thirdly, regarding the efforts which are actually undertaken in order to improve the resolvability of the financial institutions, including in a cross-border environment, the consequences of the proposal related to the implementation of the Enhanced Prudential Standards and Early Remediation Requirements for FBO needs careful examination as it could be considered as an incentive for the ring fencing of activities and assets, in contrast with the "single point of entry approach" recognized by the Financial Stability Board.

In addition, certain aspects of the reform and in particular certain triggers under consideration as part of the early remediation process, for example on leverage, could result in imposing requirements at the group consolidated level that go beyond the agreed international minimum standards. While supervisors can of course always go beyond the international minimum standards at domestic level and decide to implement higher requirements, measures that could have impact on other jurisdictions and would interfere with the global implementation of international standards should as a matter of principle be avoided.

Finally, I would point out that the impact of the reform seems very difficult to anticipate, especially for the French entities which are also registered as Swap Dealer, accordingly to the OTC derivatives market reform implemented through Section 710 *et seq.* of the DFA. Such entities, located in France, are the parent holding companies and are, consequently, subject to the prudential supervision, on a consolidated basis, of the ACP.

Therefore, regarding the major concerns related to the proposed rule on the implementation of the Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies pursuant to sections 165 and 166 of the DFA, I can only urge to intensify our dialogue in order to avoid any counterproductive unilateral approach and to explore with you various options allowing to define in a constructive approach the specific conditions for a well-balanced equivalence mechanism and for ensuring full consistency of the U.S. reform with agreed supervisory practices and international standards.

I am convinced that our regulatory objectives are the same and I look forward to our continued cooperation in this field.

Yours sincerely,

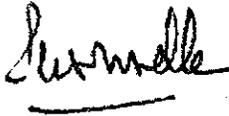
A handwritten signature in black ink, appearing to read 'Noyer', written over a horizontal line.

Christian NOYER

MICHEL BARNIER

*Membre de la Commission européenne*

Brussels, 18. 04. 2013  
BD/cq D(2013) 810846



Dear Mr. Bernanke,

The European Commission closely follows regulatory developments in the area of financial services in the United States given the strategic role of your country as trade partner of the European Union and the close interconnections between our financial systems. We pursue a very fruitful informal Regulatory Dialogue, including in the area of financial services, and hopefully will also have the opportunity to engage with you in the near future in the negotiations for Transatlantic Trade and Investment Partnership

In this context, my staff have carefully analysed the Notice of Proposed Rulemaking (NPR) on Foreign Banking Organizations (FBOs) and its potential impact on EU banks with a commercial presence in the US. I would like to thank you for the very fruitful meeting we had during my last visit to the US and for the positive collaboration of your staff in the course of our assessment of the proposed FBOs rules. It has hopefully meant that our responses to your consultation have been constructive.

First of all, I want to stress that the Commission fully shares one of the general objectives of the NPR, which is to limit the risks that operations of large FBOs may pose to the US financial system, including through the implementation of effective cross-border resolution mechanisms. However, in line with the position taken by G20 leaders at the Washington Summit of 2008, I believe that, even though regulation remains first and foremost the responsibility of national regulators, the global nature of financial markets and the lessons drawn from the recent crisis clearly call for a globally-coordinated response. Indeed, as a central part of our response to the vulnerabilities unveiled by the crisis, the EU and the US have been at the forefront of promoting and implementing an internationally-harmonised approach to banking regulation.

On 20 March 2013, the European Parliament and the Council of the EU reached an agreement on the legislative package implementing the Basel III rules in the EU from the 1 January 2014. I am sure that you share my conviction about the importance of this achievement, which paves the way to a strengthened, more resilient and better-regulated banking sector. Together with the other pillars of the future Banking Union, including the Single Supervisory Mechanism, it will help enhance financial stability in the EU and in all countries where EU banks are active, including the US.

I now expect the US to come forward with final rules on the implementation of the Basel III agreement, thereby honouring the G20 commitment.

Mr. Ben BERNANKE  
Chairman  
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If we have to maximize the effectiveness of the new international standards, it is more essential than ever to direct our common efforts towards ensuring their timely and consistent implementation in each jurisdiction, avoiding potential adverse cross-border effects. The EU is fully committed to this goal. As a consequence, in order to avoid unnecessary administrative burdens and duplicative regulatory costs on foreign institutions active in the EU, the EU framework exempts foreign banking subsidiaries from certain requirements, particularly in the area of consolidated supervision, provided, in the home jurisdiction, they are subject to a regulatory and supervisory framework equivalent to that of the EU. I would hope that the same approach is implemented also by all other jurisdictions, particularly those actively involved in the harmonization of banking rules at global level.

Against this background, certain elements of the FBOs' NPRs seem to be in substantial contradiction to the global regulatory convergence and could have a negative impact on the implementation of Basel III, jeopardizing and/or delaying the process. This may also prove detrimental for the integration of international capital markets, and for the global economic recovery.

In my opinion, the NPR would seem to represent a radical departure from the existing US policy on consolidated supervision of FBOs, in a way that may frustrate the efforts to ensure a consistent implementation of the Basel III standards across jurisdictions. Indeed, the proposed rules implement a 'one-size-fits-all' approach to consolidated supervision of FBOs, preventing US Supervisors from being able, under certain conditions, to rely on the capital provided by their parent and on supervision or regulation on a consolidated basis to which the latter is subject in its home jurisdiction.

The Intermediate Holding Company (IHC) requirement, which is one of the most important innovations of the NPR, depends exclusively on the amount of global and US assets of the institution, completely disregarding whether the latter is subject or not to a consolidated supervision in its home country equivalent to that of the US.

I fully acknowledge that, in certain circumstances, the IHC would provide an effective instrument to enhance the consolidated supervision over FBOs. However, its indiscriminate application, i.e. without linking it to a proper ex-ante equivalence test, would be against the global efforts towards harmonized rules in the area of prudential standards and cross-border resolution, and may have relevant negative impacts.

Let me in particular draw your attention to two possible unintended consequences deriving from its proposed application. The first refers to its impact on the level playing field between US domestic banks and FBOs; the second, to the potential reaction of other jurisdictions.

In my view, the IHC requirement, together with the application of heightened prudential standards at sub-consolidated level, entails relevant economic consequences for FBOs in terms of increased costs. In particular:

- Costs for establishing and maintaining the IHC and for ensuring compliance with governance and risk management standards;
- Costs for ensuring compliance with the enhanced prudential requirements at IHC level and in relation to the additional reporting burden;
- Costs for the reduced flexibility in carrying out capital and liquidity management strategies at group-wide level.

Such costs would be justified only if the FBOs were not subject, on a consolidated basis, to home country standards comparable to those of the US and if the US financial stability were at stake. In reality, despite the declared intention of putting FBOs on an equal competitive footing with US BHCs, the new framework may, instead, result in a competitive disadvantage for FBOs when considering their operations on a global basis.

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. Indeed, the potential retaliation effects of the new rules could end-up with a fragmentation of global banking markets and regulatory frameworks, with foreseeable consequences in terms of higher concentration of markets and lower levels of competition. These developments would translate into higher costs for banks, particularly those which are internationally active, with negative repercussions on their ability to finance the real economy and economic growth.

The "territorial" approach, as proposed in the NPRs, has a ring-fencing effect, which, besides fragmenting the global banking activity, also affects cooperation among regulators in the resolution of cross-border institutions. Such cooperation is essential not only in the implementation of the resolution strategies but also in their design. Trust among regulators is therefore essential to ensuring more efficient and effective resolution plans and living wills.

This "territorial" approach, in particular if replicated by other regulators, would instead preclude the possibility to resolve a G-SIFI in its entirety in a coordinated manner among different national authorities in accordance with the single point of entry strategy. This is clearly in contradiction with the international standards on cross-border cooperation in bank resolution adopted by the Financial Stability Board and endorsed by the G20.

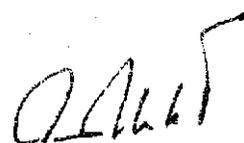
Therefore, in light of the potential negative effects of the envisaged application of the FBOs' NPR, I would like to invite you to reflect further on their scope of application with particular regard to the conditions of the IHC requirement.

I firmly believe that, in the spirit of good cooperation between national supervisors, the new US FBOs rules should be better tailored and set precise conditions to allow, in certain circumstances, that due consideration is given to the principle of 'equivalent' consolidated supervision in the home country. This should, for instance, apply to the IHC requirement, which should be imposed only in cases where the FBO is not subject on a consolidated basis to home country standards comparable to those applied in the US.

This would bring, in my opinion, more consistency between FBO rules and other areas of the US financial reform, such as the final rules adopted for the implementation of Section 113 of Dodd-Frank, where this principle has been fully maintained. We hope the same might occur in the final rules on FBOs.

My staff is ready to work closely with your staff for the achievement of such objective.

Yours sincerely, *Michel Barnier*



Michel BARNIER



**Bundesanstalt für  
Finanzdienstleistungsaufsicht**

**By e-mail:**

Federal Reserve System  
12 CFR Part 252  
Regulation YY; Docket No. 1438  
RIN 7100 AD 86

26 April 2013

**Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies**

The Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – BaFin) and the Deutsche Bundesbank would like to take the opportunity to comment on your proposal regarding the implementation of the Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies pursuant to sections 165 and 166 of the Dodd-Frank Act (DFA). We appreciate your efforts to strengthen the stability of the U.S. financial markets, as they are of the utmost importance to the global financial system. In view of this fact, we would like to comment on the global scope of your proposed rules. Before discussing the rules in more detail, we would like to stress that we strongly advocate further enhancements to the supervision of global SIBs. These, however, should be achieved through joint initiatives and on a consolidated basis, as “go it alone” national initiatives can tend to weaken the global setup and stability of global SIBs instead of stabilizing them.

Firstly, the Basel III framework is based on consolidated and internationally coordinated supervision of the cross-border activities of internationally active banks. The decision-making authorities, among them the four U.S. supervisory authorities “the Federal Reserve System (Board and NYC), the OCC and the FDIC”, fought for a level playing field for the global financial markets and their major players. Following the argumentation accompanying the proposed rule, and in view of its consequences, we see increasing risks to this level playing field stemming from a clear tendency towards “renationalizing” supervision, which, in fact, harbors real potential for supervisory arbitrage and global imbalances. At the same time, we see a conflict with the G 20 requirements agreed at the Pittsburgh Summit and potential frictions between the proposed FBO rules and the Basel III requirements, with direct consequences in the form of regulatory inconsistencies.

Secondly, regarding the global principle of approval of equal supervisory systems, the proposed rule will have a negative impact on international cooperation since it does not take appropriate account of consolidated supervision following comparable home country

standards, as is required by section 165 (b) (2) (B) of the DFA. We strongly believe that the global financial markets can only be supervised globally. From our perspective this means that we should find ways to improve international cooperation among supervisors and not endanger the existing level of collaboration. Solo approaches will not appropriately mirror the complex risks taken by internationally active banks and will create a conglomerate of fragmented supervisory approaches.

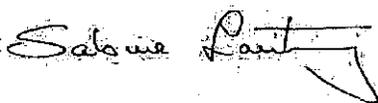
Thirdly, we would like to point out that the proposal does not treat FBOs and domestic banks equally in terms of competition. This is particularly true of the proposed provisions on liquidity and funding and the requirement to form a U.S. IHC. Higher funding costs, resulting from the lack of a broad deposit base and the potential impact on IHC stand-alone ratings, would add to this effect. In our view, there would undoubtedly be a negative impact on the competitive structure of the U.S. market. We also see a further conflict with the requirements of section 165 (b) (2) (A) of the DFA.

Fourthly, the proposed requirements on liquidity buffers under recovery and resolution conditions set high standards for the liquidity available to legal entities within the U.S.. Following the line of thought of the proposal, such liquid assets and instruments would therefore be unavailable for free floating within the group as required by a consolidated supervisory approach. Furthermore, this means essentially rejecting the FSB principle concerning a "single point of entry". Consequently, European banks could be forced to reduce their activities in the U.S., as waivers for group-wide capital requirements would be under threat.

Fifthly, in connection with our fourth point, we see conflicts between the aforementioned U.S.-specific liquidity requirements and global requirements on the preconditions for recovery and resolution that are applicable to internationally active institutions. While we understand the potential motivation behind such a move, we also fear that it might harm international cooperation. In view of the concerns outlined above, we would ask you to carefully reconsider the design of the proposed rule on the implementation of the Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies pursuant to sections 165 and 166 of the DFA.

Finally, we would like to encourage you to strive for joint initiatives with the other supervisors of G-SIBs on a global basis. We think that the most effective way to strengthen supervision is through intense coordination and collaboration rather than "go it alone" national initiatives. The Deutsche Bundesbank and the BaFin can assure you that they stand ready to fully support such efforts.

Sincerely yours,



Deputy President  
Deutsche Bundesbank



President  
BaFin