



BOARD OF GOVERNORS  
OF THE  
**FEDERAL RESERVE SYSTEM**  
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

July 17, 2015

Dr. Nico Zachert  
Head of Compliance  
FMS Wertmanagement AöR  
Prinzregentenstrasse 56  
80538 München  
Federal Republic of Germany

Dear Dr. Zachert:

This is in response to your requests for 1) a temporary exemption under section 4(c)(9) of the Bank Holding Company Act of 1956 (“BHC Act”) (12 U.S.C. § 1843(c)(9)) for FMS Wertmanagement AöR (“FMS-WM”), Munich, Germany, a resolution and workout company organized under the laws of the Federal Republic of Germany, from the nonbanking restrictions of the BHC Act, 2) a temporary exemption for FMS-WM from the reporting, filing, and capital requirements attendant to ownership of a foreign banking organization that does business in the United States, and 3) an extension of six months, until December 31, 2016, of the compliance date for the enhanced prudential standards applicable to a foreign banking organization under the Board’s Regulation YY. FMS-WM’s requests are in connection with the transfer of DEPFA Bank plc (“DEPFA”), Dublin, Ireland, to FMS-WM from a separate company owned by the German government in connection with the German nationalization of Hypo Real Estate Holding AG.

FMS-WM is an institution directly owned by the German Financial Market Stabilization Fund (“SoFFin”) and organized under German law, and relies on funding backed by the full faith and credit of the German government. FMS-WM was established in 2010 to liquidate nationalized financial institutions and operates under the supervision and control of the German government. FMS-WM also engages in a range of administrative, portfolio management, and operations servicing activities in the United States through FMS Wertmanagement Service GmbH (“FMS-SG”). FMS-SG maintains an office in New York. FMS-WM does

not expect to engage in activities in the United States that would be impermissible to bank holding companies. DEPFA operates in the United States through its New York branch office and is a qualifying foreign banking organization under Regulation K.<sup>1</sup>

Section 4(c)(9) of the BHC Act allows the Board to grant an exemption from the nonbanking restrictions of the BHC Act to any foreign banking organization if the Board determines that the exemption would be in the public interest and not substantially at variance with the purposes of the BHC Act. The Board has previously stated that broad public policy issues are raised by applying the restrictions of the BHC Act to foreign government-owned companies.<sup>2</sup> The Board's decisions in prior cases have indicated a willingness to use the authority of section 4(c)(9) to grant foreign government-owned companies broad authority to make nonbanking investments in the United States.<sup>3</sup>

The ability of FMS-WM to make new investments is very limited under German law. FMS-WM's only foreign bank subsidiary with U.S. operations is DEPFA, and DEPFA is precluded from conducting new business in the United States. In the course of temporarily operating, and liquidating or selling assets, of DEPFA, FMS-WM would be engaged in nonbanking activities in the U.S. or may acquire temporarily assets in the U.S for purposes of the BHC Act. For example, FMS-WM has indicated it might be required to acquire U.S. assets through debt-for-equity swaps, which FMS-WM staff have stated would be a measure of last resort. It is expected that DEPFA's U.S. branch would be terminated by the end of 2016, at which time FMS-WM would no longer be subject to the BHC Act or Regulation YY.

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<sup>1</sup> 12 CFR 211.23(b).

<sup>2</sup> In 1988, the Board noted that the Congress was mindful of these concerns and provided the Board with broad authority to exempt foreign companies from the nonbanking restrictions of the BHC Act where the Act has the effect of extending the impact of the U.S. regulatory framework to economic transactions and relationships that take place entirely outside the United States. See Board letter to Patricia Skigen, Esq., dated August 19, 1988.

<sup>3</sup> See Board letter to Arthur S. Long, Esq., dated November 26, 2008; Board letter to Robert L. Tortoriello dated November 26, 2008; Board letter to H. Rodgin Cohen, Esq., dated August 5, 2008.

To minimize the potential for conflicts of interest, concentration of resources, and unsound banking practices, as well as to mitigate any potential competitive advantage that may accrue to FMS-WM and its subsidiaries from the exemptions, FMS-WM has made a number of commitments to the Board.

First, FMS-WM has committed that a majority of its consolidated business will continue to take place outside the United States, consistent with the requirement of section 4(c)(9).

Second, consistent with the requirements of the BHC Act and the Federal Reserve Act, FMS-WM has committed that it and any company, including any foreign bank, that is controlled by FMS-WM will obtain prior Board approval to make a direct or indirect investment in 5 percent or more of the voting shares of a U.S. bank or other U.S. depository institution,<sup>4</sup> or to acquire more than 25 percent or otherwise control a corporation organized under section 25A of the Federal Reserve Act (an Edge corporation).<sup>5</sup> FMS-WM has also committed that DEPFA and any future foreign bank subsidiary of FMS-WM will remain fully subject to the Board's Regulations K and Y with respect to its activities and investments and will be treated the same as any other foreign banking organization.

FMS-WM has also requested an exemption from the reporting, filing, and capital requirements attendant to ownership of a banking organization that does business in the U.S. DEPFA would remain subject to these requirements. FMS-WM believes the reporting, filing, and capital requirements applicable to foreign banking organizations under these provisions would require the German government to substantially increase FMS-WM's funding and personnel and interfere with the government's efforts to sell or liquidate DEPFA. In addition, due to its unique funding situation and the full loss compensation provided by the German government, FMS-WM is not required to, and does not, provide capital ratio information to its home country authorities. As a result, some of the U.S. reporting requirements may seek information that is not available.

In addition, FMS-WM has requested an extension of six months, until December 31, 2016, to comply with the enhanced prudential standards applicable to foreign banking organizations pursuant to Regulation YY. Regulation YY permits the Board to extend any compliance date in the regulation if it determines

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<sup>4</sup> 12 U.S.C. § 1842(a).

<sup>5</sup> 12 U.S.C. §§ 611 and 619.

that such extension is appropriate.<sup>6</sup> In determining whether any an extension is appropriate, the Board considers the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with the enhanced prudential standards, and the actions the company is taking to come into compliance with the standards.<sup>7</sup> The proposed extension would not have an impact on financial stability, since FMS-WM is owned and supervised by the German government, whose full faith and credit backs its obligations. During the proposed extension period, FMS-WM expects to complete the wind-down and liquidation of the activities of DEPFA's New York branch. When the New York branch has been closed and DEPFA's branch license returned, FMS-WM will no longer be a foreign banking organization subject to enhanced prudential standards.

The temporary exemptions and extension requested by FMS-WM would facilitate the resolution of DEPFA by the German government and would not provide a competitive advantage to FMS-WM because the activities of FMS-WM are limited to wind-down operations. The exemptions would not raise financial or safety and soundness issues because FMS-WM is a government organized and owned resolution entity.

The U.S. activities of FMS-WM would be limited to those reasonably necessary to wind down DEPFA. FMS-WM would not be permitted to conduct other operations in the United States without prior approval.

Based on all the facts of record, the Board has determined that it would be in the public interest and not substantially at variance with the purposes of the BHC Act to grant to FMS-WM a temporary exemption from the nonbanking restrictions of the Act under the authority of section 4(c)(9) of the Act. FMS has also been temporarily exempted from the reporting, filing, and capital requirements attendant to ownership of a banking organization that does business in the United States under the BHC Act, the International Banking Act of 1978, and the Board's Regulations K and Y. In addition, the date by which FMS-WM must comply with the enhanced prudential standards of Regulation YY has been extended until December 31, 2016. FMS-WM should monitor investments made by its controlled companies, including in this case its foreign bank subsidiaries, in order to determine whether, in the aggregate, such investments might trigger an application threshold with respect to a U.S. depository institution or cause FMS-WM to be

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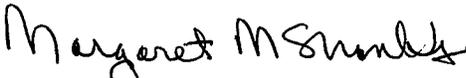
<sup>6</sup> 12 CFR 252.3(b).

<sup>7</sup> Id.

considered to control a company that owns a U.S. depository institution. The exemptions and extension would be effective until December 31, 2016, or until DEPFA's New York branch is closed and its license returned to New York State, whichever occurs first. These exceptions and extension apply only to the extent that the relevant requirements are due to FMS-WM's ownership of DEPFA.

Should there be a material change in the facts, the Board may review its determination. The commitments relied on in reaching this decision are conditions imposed in writing by the Board in connection with the findings and decision herein and may be enforced in proceedings under applicable law.

Very truly yours,

  
Margaret McCloskey Shanks  
Deputy Secretary of the Board