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

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 12, 2013

Salvatore P. Palazzolo, Esq.
Managing Director and
Assistant General Counsel
Deutsche Bank AG, New York Branch
60 Wall Street
New York, New York 10005

Subject: Request for a transition period under section 716(f) of the Dodd-Frank Act

Dear Mr. Palazzolo:

This responds to the request filed by the uninsured New York branch of Deutsche Bank AG ("DBNY") for a transition period under section 716(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). DBNY is an uninsured state branch of Deutsche Bank AG ("Deutsche Bank"), Frankfurt, Germany. Deutsche Bank provisionally registered with the Commodity Futures Trading Commission (the "CFTC") as a swap dealer on December 31, 2012.

Section 716 of the Dodd-Frank Act generally prohibits the provision of "Federal assistance" to any swaps entity, subject to certain exceptions for insured depository institutions.[1] A swaps entity generally includes any swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant that is registered under the Commodity Exchange Act or the Securities Exchange Act of 1934, as applicable, with certain exceptions.[2]

Section 716(f) provides that the appropriate Federal banking agency "shall permit" an insured depository institution that qualifies as a swaps entity a transition period of up to 24 months to comply with the provisions of section 716. The Board is the appropriate Federal banking agency for state member banks and uninsured state branches and agencies of foreign banks.[3] The Board issued an interim final rule that, among other things, clarified that uninsured U.S. branches and agencies of foreign banks, such as DBNY, are treated as insured depository

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[1] *See* 15 U.S.C. § 8305(a). "Federal assistance" is defined in section 716(b)(1) as "the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under section 13(3)(A) of the Federal Reserve Act, Federal Deposit Insurance Corporation insurance or guarantees. ..." 15 U.S.C. § 8305(b)(1).

[2] *See* 15 U.S.C. § 8305(b)(2).

[3] *See* 12 U.S.C. § 1813(q)(3).

institutions for purposes of section 716.[4] The interim final rule also established a process for state member banks and uninsured state branches and agencies of foreign banks to apply to the Board for the compliance transition period provided in section 716.[5] Section 716(f) requires the Board to consult with and consider the views of the CFTC and the Securities and Exchange Commission (the "SEC"), as appropriate, when determining an appropriate transition period.[6]

Background

Section 716 is contained in Title VII of the Dodd-Frank Act, which establishes a comprehensive new regulatory framework for swaps, security-based swaps, and the markets for such instruments. An orderly restructuring of swaps-dealing activities as a result of the application of section 716 is related to and affected by regulatory actions to implement Title VII. Development of the regulatory structure under Title VII is ongoing. The CFTC and the SEC, which have primary regulatory authority for Title VII, are actively issuing proposed and final rules, as well as guidance and exemptive orders, to implement Title VII. Although the Title VII regulatory structure is still being implemented, section 716 goes into effect on July 16, 2013.[7]

In granting a transition period under section 716(f), the Board is required by statute to take into account and make written findings regarding the potential impact of divestiture or cessation of swaps-dealing activities on the insured depository institution's (1) mortgage lending, (2) small business lending, (3) job creation, and (4) capital formation versus the potential negative impact on (1) insured depositors and (2) the Deposit Insurance Fund ("DIF") of the Federal Deposit Insurance Corporation ("FDIC") (the "Statutory Factors").[8] The Board may also consider other factors as may be appropriate.[9] The Board has delegated authority to the Director of the Division of Banking Supervision and Regulation ("Director") or his or her designee, in consultation with the General Counsel, to establish a transition period of up to 24 months for institutions requesting transition-period relief.

Consideration of the Statutory Factors and Findings

In establishing the appropriate transition period for DBNY to effect divestiture or cessation of swaps-dealing activities, the Director has considered the Statutory Factors as well as the extent to which the length of the transition period would affect the potential for operational

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[4] *See* 78 Federal Register 34545, "Prohibition Against Federal Assistance to Swaps Entities (Regulation KK)" (June 10, 2013).

[5] *See* Id.

[6] Board staff consulted with the CFTC and the SEC. Neither agency offered comment on the request.

[7] *See* Guidance on the Effective Date of Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 77 Federal Register 27456 (May 10, 2012).

[8] 15 U.S.C. § 8305(f).

[9] Id.

risk problems and other risks associated with restructuring swaps activities. In its request for transition-period relief, DBNY represented that it would be required to divest or cease a portion of its current swaps activities in order to limit the swaps activities to those that would be permissible under section 716(d) of the Dodd-Frank Act after the expiration of the transition period.

Mortgage Lending.

Near-term cessation or divestiture of DBNY's swaps activities may increase operational risk for DBNY and its counterparties. Operational risk problems in swaps markets could disrupt broad financial markets since swaps are widely used by corporations, institutional investors, and other financial market participants. A disruption to broad financial markets could indirectly disrupt mortgage-lending markets.

Moreover, an uninsured branch that is novating derivatives contracts or ceasing derivatives activities may be subject to reputation risk. These risks could negatively affect the ability of the branch, its parent depository institution, and the depository institution's affiliates to access capital markets or hedge their own risk. To the extent that the branch and its affiliates engage in mortgage lending, this inability to access capital markets or hedge risks could lead to a slowdown in the branch, the bank, and the bank's affiliates' own mortgage market activity and potential delays to mortgage applicants.

Divestiture or cessation of DBNY's swaps activities in the short run may also pose challenges to the branch's clients who are active in the mortgage market as investors, servicers, and originators to the extent that it could complicate the routine implementation of risk-management strategies. As a consequence, counterparties could more quickly run up against their limits on counterparty exposure to DBNY, Deutsche Bank, and its affiliates, which would likely raise the cost of mortgage lending or lead to a reduction in the amount of mortgage lending.

A 24-month transition period could significantly mitigate operational risk and reputation risk by providing reasonable time for DBNY to develop and implement an orderly transition plan. Lower operational risk, in turn, could decrease the probability of a financial market disruption that could adversely affect mortgage lending, as discussed above.

Small Business Lending.

Consistent with the effects on mortgage lending, near-term cessation or divestiture of DBNY's swaps may pose operational risks and reputation risks that affect small business lending to the extent conducted by DBNY, Deutsche Bank, and Deutsche Bank's affiliates. Operational problems in the swaps market in general could also have a negative effect on small business lending.

A 24-month transition period could mitigate these risks and, therefore, mitigate the risk of a financial market disruption that could impair small business lending. Lower operational

risk, in turn, could decrease the probability of a financial market disruption that could adversely affect small business lending, as discussed above.

Job Creation.

In evaluating the effects of divestiture or cessation of swaps dealing on job creation, the Director has considered the direct relationship between immediate cessation of derivatives activities and the loss of revenues and jobs.

The near-term cessation or divestiture of DBNY's swaps activities has the potential to result in job losses if DBNY reduces its lending and financial intermediation activities.

A 24-month transition period could mitigate the potential for general market disruptions, including disruptions to credit and capital markets that could weaken job growth and have other negative macroeconomic consequences.

Capital Formation.

In evaluating the effects of divestiture or cessation of swaps dealing on capital formation at DBNY, the Director has considered, among other things, lending activities, the loss of netting efficiencies, and costs associated with the modification of business practices and compliance procedures.

Negative impacts on lending described above may have a negative effect on capital formation of counterparties, especially in the short term, if counterparties are forced to replace swaps at DBNY with swaps with other counterparties. Loss of netting efficiencies and modifications to business practices and compliance procedures may also negatively affect capital formation and cause a disruption in capital markets. The potential hazard of a disruption in capital markets may be more immediate than in other markets because capital markets may react quickly to operational problems. This would be especially true for a financial institution that encounters any serious operational problems from section 716-related restructuring because of the relationship between derivatives activities and capital markets activities.

A 24-month transition period could mitigate the potential for capital market disruptions. Thus, by granting a sufficient transition period, risks to individual financial institutions and to the banking system as a whole would be decreased. The benefits of mitigating the risk of capital market disruption favor granting a 24-month transition period to DBNY.

Other Factors.

As permitted by section 716, the Director has also considered other potential effects of requiring immediate conformance with section 716. Compliance with section 716 will require an uninsured branch of a foreign bank, such as DBNY, to (1) determine whether to terminate its swaps activities or transfer them to a third party or an affiliate; (2) identify and capitalize an affiliate, if appropriate, to accept the swaps; and (3) novate existing swaps to the affiliate. Terminating or novating existing swaps will require the parties to negotiate and enter into new or

modified swap arrangements, which could change the parties' exposure with respect to the swaps. New agreements or modifications to existing agreements may require the parties to adjust related transactions, including existing hedges. If a branch were required to divest or cease these swaps activities in a short time period, it may lead to a disorderly and inefficient unwinding that could present operational and risk-management risks for both the branch and its counterparties. These challenges and risks are significantly more complicated by the fact that they would occur simultaneously with many regulatory and structural market changes associated with the implementation of Title VII.

Insured Depositors.

DBNY's deposits are not insured by the FDIC. Therefore, DBNY's swaps activities do not, and providing DBNY with a reasonable transition period would not, directly expose insured depositors to the risks associated with cessation or divestiture.

The Deposit Insurance Fund (DIF).

The DIF bears the risks associated with resolving an insured depository institution, including one that has failed because of problems related to its swaps dealing. This risk includes payouts from the DIF to insured depositors of the institution. However, as noted, DBNY's deposits are not insured by the FDIC. Therefore, DBNY's swaps activities do not, and providing DBNY with a reasonable transition period would not, directly result in an exposure to the DIF.

Conclusion

As set out above, the Director has evaluated the impact of divestiture or cessation of DBNY's swaps dealing on mortgage lending, small business lending, job creation, and capital formation versus the potential negative impact on insured depositors and the DIF in determining the appropriate length of the transition period. The Director also has considered the fact that DBNY is required to conduct affected derivatives activities in a safe and sound manner and is subject to prudential supervision and regulation. Overall, the Director has determined that the potential impact of granting a 24-month transition period is less adverse than the potential impact of denying the transition period or providing a significantly shorter transition period. The lesser impact associated with a 24-month transition period results from lowering the probability of operational problems and market disruption that could occur if DBNY does not have a sufficient opportunity to restructure its swaps dealing in an orderly manner.

The 24-month transition period would permit DBNY to better evaluate whether to transfer the swaps activities to a third party or an affiliate(s) and which affiliate(s) is best positioned to accept its swaps business. The 24-month transition period also would permit the creation of a new affiliate(s) and allow for appropriate capital planning for any affiliate that assumes swaps activities. This transition period would also allow DBNY to evaluate its decisions in the context of further development of the regulatory requirements of Title VII.

In contrast, no transition period or a significantly shorter transition period could result in disorderly termination or divestiture of swaps activities and considerable disruption to swaps

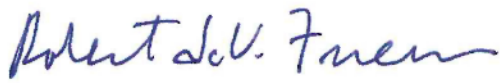
markets and financial markets that could weaken lending markets and result in a similar negative impact on job creation and capital formation.

After considering the written findings set forth above, and after consulting with the CFTC and the SEC, the Director, in consultation with the General Counsel, acting pursuant to delegated authority, has determined to establish a 24-month transition period under section 716(f) for DBNY beginning on July 16, 2013.

This approval is conditioned on the facts and representations set forth in DBNY's correspondence. These representations are deemed to be conditions imposed in writing by the Board in connection with the findings and decision herein and, as such, may be enforced in proceedings under applicable law. Any change in the facts and representations presented could result in a different conclusion and should be reported to Board staff immediately.

If you have any questions concerning this letter, please contact Paige Pidano, Counsel, at (202) 452-2803, or Christine Graham, Senior Attorney, at (202) 452-3005, both of the Board's Legal Division.

Sincerely yours,



Robert deV. Frierson
Secretary of the Board

cc: Ivan J. Hurwitz, Vice President
Federal Reserve Bank of New York