Deutsche Bank

Deutsche Bank AG New York
60 Wall Street
New York, NY 10005 – 2858
Tel 212 250-2500

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Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, DC 20429
Attention: Comments
Robert E. Feldman, Executive Secretary
FR Docket No. 2013-30057

Re: FDIC's Request for Comments on the Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy

Dear Mr. Feldman:

Deutsche Bank AG ("**Deutsche Bank**") appreciates the opportunity to provide comments to the Federal Deposit Insurance Corporation's (the "**FDIC**") notice on *The Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy* (the "**SPOE Strategy**") for resolving failed systemically important financial institutions ("**SIFIs**") under Title II of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*.

Deutsche Bank supports the FDIC's efforts to implement the Financial Stability Board's *Key Attributes for Effective Resolution Regimes for Financial Institutions* and address adverse effects on financial stability in the United States **("U.S.")** when bankruptcy is not a viable way to resolve a SIFI. However, there is a risk that if not correctly applied the strategy proposed, especially for the U.S. operations of a foreign banking organization ("**FBO**"), such as Deutsche Bank, could result in multiple points of entry, a protracted resolution and increased systemic risk. For SPOE to be a viable option, we believe that it is critical that regulators reach an understanding as to the resolution of Global SIFIs ("**G-SIFIs**") on a global basis. We make reference to our response letter[1] on *Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations* dated April 29, 2013 (the **"FBO Rule"**) to the extent the letter refers to the difficulties raised by having multiple, often conflicting regulatory regimes.

Specifically, we note the following with respect to the SPOE Strategy:

1. A written cross-border cooperation agreement is necessary, especially with home country regulators to prevent multiple ring-fencings of assets during resolution of SIFIs with global footprints.
2. The effectiveness of the proposed exit strategy from Title II must be reexamined to prevent loss of value to creditors.
3. Subsidiarization can make the implementation of an SPOE strategy and in particular bail-in more difficult to implement.
4. The leverage ratio is not likely to be a meaningful measure of capitalization.

Deutsche Bank believes the suggestions and recommendations set forth below will achieve the FDIC's objective of minimizing the potential for systemic harm to the global and / or U.S. financial system.

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1. A written cross-border cooperation agreement is necessary, especially with home country regulators to prevent multiple ring-fencings of assets during resolution of SIFIs with global footprints

We support the FDIC's commitment on cross-border cooperation to facilitate the SPOE strategy and believe this is most effective when applied to a bank's global operations rather than within individual jurisdictions. We recognize that each regulator inevitably develops requirements that are in the interests of its own jurisdiction. However these "balkanized" frameworks can often lead to the direct opposite of the goal they seek to achieve:

[1] http://www.federalreserve.gov/SECRS/2013/July/20130705/R-1438/R-1438_042913_111104_460291695185_1.pdf

financial stability and reduced systemic risk. An agreed-upon coordinated approach can avoid the problems that arise when each regulator attempts to seize or restrict assets in its jurisdiction for the principal benefit of creditors in that jurisdiction. Therefore, we firmly believe that it is essential to have a formal agreement with other regulators on a framework for the global resolution of systemic banks through a global single point of entry rather than multiple points of entry.

In our particular case, we urge the FDIC to enter a formal written agreement with *Bundesanstalt für Finanzdienstleistungsaufsicht* ("**BaFin**") to recognize the German Transfer Order ("**Transfer Order**"). The Transfer Order is a new power of BaFin to transfer systemically important parts of a German credit institution to a bridge bank ("**Bridge Bank**"). This would allow BaFin to separate "good" (systemically important) parts of the entity from the "bad" (not systemically important) parts and to ensure that public support is limited to the good part while the remaining assets and liabilities are wound down at the risk of stakeholders. Under the German Banking Act, to effect an orderly transition of the systemically important businesses of the German parent company to the Bridge Bank, contracts and other legal relationships may not be terminated solely as a consequence of the Transfer Order and hive-down. We note that in the European Union, progress on adopting the Directive for Banks Recovery and Resolution ("**BRRD**") and the Single Resolution Mechanism ("**SRM**") are key developments in the global implementation of the SPOE Strategy, which we assume will validate the legal effects of the Transfer Order. The BRRD will further provide European resolution authorities with important new regulatory powers to cooperate with a U.S. resolution, including the power to transfer assets and liabilities to a U.S. bridge bank, and the power to nullify cross-default rights of counterparties to European trades triggered by the U.S. Title II proceeding.[2]

We are supportive of the efforts highlighted by the FDIC in the SPOE Strategy on working with BaFin, the *Swiss Financial Market Supervisory Authority* ("**FINMA**"), and the Bank of England for standardizing *International Swaps and Derivatives Association* ("**ISDA**") agreements. However, we believe that the FDIC should go further by recognizing non-default provisions in the laws of other jurisdictions, and encourage

[2] *See* Council of the European Union, Proposal for a Directive Establishing a Framework for the Recovery and Resolution of Credit Institutions and Investment Firms (final compromise text), document 17958/13, Articles 45, 60a (December 18, 2013).

efforts to draft legislation to ensure a resolution under Title II is not considered an 'event of default' in order to firmly preserve market contracts.

We further stress that global co-operation is essential to effectively implement Title I. Agreement in advance between resolution authorities will ensure an effective regime for information sharing which can expedite the resolution of a cross-border institution and prevent protracted litigation between receivers of affiliated entities. The ring-fencing of local assets of foreign banks impedes the resolution of a global financial institution and increases the likelihood of financial market destabilization. When there is clearer articulation and further information regarding how home country regulators will affect the global resolution of G-SIFIs, the result can only be increased financial stability and reduced overall systemic risk. This is the goal towards which all resolution authorities should strive. Resolution regimes which focus solely on local interests frustrate its achievement.

2. The effectiveness of the proposed exit strategy from Title II must be reexamined to prevent loss of value to creditors

We acknowledge that the resolution of large SIFIs is preferably conducted under the U.S. Bankruptcy Code, based on resolution plans that SIFIs prepare pursuant to Title I of Dodd-Frank.[3] We further acknowledge Title II would only be invoked in the event that resolution under the Bankruptcy Code would have "serious adverse effects on financial stability in the United States" and that resolution under Title II would "avoid or mitigate such adverse effects."[4]

We believe that the impetus to dispose of assets in order to exit from Title II resolution proceedings should be balanced against the risk of loss of value through "fire sales" into a depressed market, as well as any possibility of further restructuring that can be undertaken under the regulators' supervision following the company's exit from Title II. The time limit for terminating the bridge financial company in 180-270 days is very aggressive

[3] §165(d).

[4] § 203(b)(2), (5).

and could cause loss of value to creditors. In contrast, the BRRD provides for a maximum 3-year timeframe with a level of discretion where forced exit would damage creditor value. The SPOE strategy rightly sets out various restrictions and enforced changes on the failing institution, including the removal of management responsible for the failure of the firm, claw-back of compensation, and the imposition of losses on shareholders and creditors. Forcing fire sales will inevitably result in depressed asset values, unnecessary losses and contagion risk. This can only lead to the destabilization of the financial markets, the very issue an effective resolution strategy should be designed to avoid. The SPOE strategy must be consistent with the statutory mandate to maximize value in connection with the resolution process and the FDIC should retain the discretion to make decisions that will balance the interests of maximizing value with minimizing systemic risk under the circumstances. To that end the FDIC should also consider the views of the incoming owners of the recapitalized institution when making determinations about the disposition of the assets of the bridge holding company. We believe that this would be the most effective way of advancing the FDIC's overall goal of ensuring financial stability.

3. Subsidiarization can make the SPOE strategy and in particular bail-in more difficult to implement

We support the development of a global SPOE strategy and stress that additional detail should be shared with home country regulators to provide assurance that foreign subsidiaries and branches will be treated fairly under a global SPOE strategy.

In resolution, the concern that appears to drive subsidiarization and pre-failure ring-fencing is not as much holding company loss absorbency but a perceived inability or unwillingness of the home country supervisor to transfer loss absorbency from the parent to the foreign operations in resolution. If host-country supervisors are not confident that the home country supervisor will fairly apportion assets to recapitalize a local subsidiary in a timely or sufficient manner, they might seek to make the subsidiary "failure proof," or require enough capital that it can be liquidated without creditor loss upon failure.

Subsidiarization however can make the flow of capital and liquidity less flexible within the group in comparison to a branch network. In the event of resolution where liabilities are bailed-in at the parent holding company and need to be distributed throughout the group, formal agreements will be required to be put in place between the parent and subsidiaries demonstrating the flow of bailed-in capital to these relevant subsidiaries. Similar agreements are not required between the parent and branches.

4. The leverage ratio is not likely to be a meaningful measure of capitalization

We understand the FDIC's view of leverage as a measure of capitalization in determining value in times of stress; however in reality, leverage as a measure does not allow for adjustments to be made to credit risk or the liquidity of a position. It is also inappropriate to use the leverage ratio as a sole measure of risk because it does not meet the objective of capturing a firm's risks and ensuring appropriate capitalization. Leverage, by design, treats more or less risky assets equally and therefore provides no insight into: (i) the riskiness of a specific firm; or (ii) the amount of capital that must be held to ensure a bank is sufficiently insulated in times of stress. In our view, leverage should be viewed as a backstop to risk-based capital requirements which takes into account economic and systemic risk that bank balance-sheets and activities represent.

Using leverage to reflect a bank's ability to withstand periods of stress will potentially encourage banks to shift the asset mix on their balance sheet towards higher-yielding, and therefore more risky and/or less liquid assets. Further, it will likely reduce firms' willingness to accommodate large demands in client cash balances or accept deposits (as they attract a leverage capital requirement, even though riskless), both of which play a vital role in the economy. This effect is compounded by and inconsistent with other parts of the Basel 3 framework, notably the new liquidity management standards under the global Liquidity Coverage Ratio ("**LCR**") - which in the U.S. is required to be invested principally in low risk or risk free assets. To the extent that the leverage ratio consumes significant capital in low-risk, low-yielding assets, then it is likely that other balance sheet activities will need to be re-priced in order to generate the necessary overall level of return. This can only adversely affect the real economy.

Therefore, the current divergence between standards will disrupt both the alignment among global regulatory approaches and the establishment of harmonized global standards, creating adverse consequences for the affected institutions and financial stability.

Recommendations

The FDIC should:

1. Finalize written agreements with other regulators on a framework for the global resolution of systemic banks through a global single point of entry strategy rather than multiple points of entry.
2. Introduce flexibility to the SPOE exit strategy protocol so as not to harm creditors of the bridge bank or other interested parties.
3. Place less emphasis on subsidiarization as it can make a SPOE resolution more difficult to implement, but instead consider a branch structure which provides more flexibility to manage liquidity and risk globally.
4. Consider the leverage ratio along with risk-weighted capital calculations as a better representation of an entities financial soundness as the leverage ratio, by itself, is not a suitable measure for adequate capitalization.

Deutsche Bank appreciates the opportunity to provide the FDIC with the foregoing comments and recommendations regarding the SPOE Strategy.

Respectfully submitted,

Bill Woodley
Deputy CEO, Deutsche Bank North America
General Manager, Deutsche Bank AG, New York Branch
(212) 250-1568