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Ref.: EBF_007291

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Brussels, 19 March 2014

Launched in 1960, the European Banking Federation (EBF) is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.

EBF response to the Federal Deposit Insurance Corporation (FDIC) Notice and Request for Comments on the Resolution of Systemically Important Financial Institutions (SIFIs): The Single Point of Entry (SPOE) Strategy (FR Docket No. 2013-30057)

Dear Mr Feldman,

The EBF welcomes the opportunity to comment on some of the cross-border issues addressed in the above-mentioned Notice to which the FDIC invited comments. The SPOE strategy is part of the FDIC work to implement the Orderly Liquidation Authority established under Title II of Dodd Frank Act (DFA) to allow for the orderly resolution of SIFIs. As the representative of European banks, the EBF's interest is focused primarily on requirements vis-à-vis European banks for their cross-border operations in the United States and elsewhere. Although the FDIC Notice deals with U.S.-headquartered banks and their international operations, we nevertheless think that our observations from the viewpoint of European banks may contribute to the further deliberations by the FDIC, as well as other U.S. and foreign regulators on cross-border issues of resolution. More generally, we regard internationally consistent rules and comparable balances of home and host-country treatment of internationally active banks as a prerequisite of efficient regulation, including, but not limited to, resolution of SIFIs.

<u>Host-country ex-ante ring-fencing requirements restrict international banks' activities and may impede their ability to recover from stress</u>

We agree with the statement in the FDIC's Notice (p. 76623 vol. 78, No. 243 Federal Register) that ring-fencing by host-country authorities of a SIFI's local operations could impair the effectiveness of a SPOE strategy. We believe that this also applies to *ex-ante* (i.e. pre-failure) ring-fencing. For instance, local prudential requirements above international norms may impede

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a foreign bank's flexibility to respond to stress situations of its operations in other jurisdictions. While the drive to ring-fence local operations of foreign banks is understandable from the host regulator's viewpoint, such policies tend to restrict the global conditions for international banking, reduce international capital flows and local market liquidity, and also impede the response options of an internationally active banking group to local stress points.

The Federal Reserve's (Fed) Final Rule implementing Section 165 DFA gives rise to these concerns, since it ring-fences capital and liquidity of large non-U.S. banks with large U.S. operations. Similar regulatory developments in other jurisdictions are likely to follow and this would further exacerbate the negative effects.

A view holding that the Intermediate Holding Company (IHC) structure introduced under the Fed's Final Rule could serve as an SPOE for a foreign bank's U.S. operations seems at odds with a coherent SPOE strategy from the perspective of the relevant home-jurisdiction regulators of Foreign Banking Organisations (FBOs). While we understand the reasoning that an *ex-ante* ring-fencing, as introduced by an IHC structure and related prudential requirements for FBOs, would add security to the U.S. financial system in absence of reliable home-country based recovery and resolution strategies and instruments, we hold the firm view that this is clearly only a second-best solution when compared to a more balanced international regulatory system, in which there is adequate recognition of foreign banks' comparable home-jurisdiction rules for recovery and resolution. The EU framework for recovery and resolution (Bank Recovery and Resolution Directive - BRRD) provides a fully-fledged set of rules in this regard.

Mandatory subsidiarisation should not be required under cross-border resolution considerations

A subsidiarisation requirement as contemplated in the Notice for U.S.-headquartered SIFIs' operations abroad (p. 76623-76624) would, in its generalized application, strongly interfere with the flexibility of internationally active banks and, indeed, with international competition in banking. Liberalisation commitments by economically advanced countries under both multilateral and bilateral trade law (i.e. the WTO's GATS and bilateral trade agreements) usually enshrine foreign banks' freedom to operate in various legal forms (e.g. branch, minor investment in domestic banks, subsidiaries, joint-ventures) so that foreign banks are able to choose the legal form most suited to their business, risk-management, funding or other needs. EBF believes that neither the SPOE strategy considered in the Notice nor a transparent Multiple Points of Entry (MPOE) strategy would require such a drastic measure in order to function properly.

In this context, we note that the Fed's Final Rule implementing Section 165 DFA does not require a subsidiarisation of U.S. branches of FBOs, although it does restrict the flexibility of their U.S. operations in other ways as described above.

More cross-border regulatory cooperation is needed, also to overcome second-best ring-fencing approaches

The EBF strongly supports the priority for cross-border cooperation and better coordination with foreign regulatory authorities stated in the FDIC Notice (p. 76624) and greatly appreciates the significant steps which the FDIC has already taken in this regard.

We encourage both the FDIC and the Fed to intensify their work with FBOs' home regulators for a more coordinated and internationally balanced approach to recovery and resolution of internationally active banks. With substantial progress in such an approach, the Fed should consider removing the IHC requirement and / or the prudential requirements related to it. A point of reference in this regard could be the recognition of resolution frameworks of those jurisdictions implementing the FSB's Key Attributes of Effective Resolution in their rulemaking, as the EU has done with the BRRD. In fact, Article 85 of the BRRD already provides the legal basis for recognition of third country resolution proceedings, such as the SPOE approach envisaged in the FDIC Notice. In addition, the ongoing cooperation of regulators and sharing of information in the crisis management groups should serve as a means to build confidence among host-country regulators in home-jurisdiction solutions to recovery and resolution.

Recognition arrangements by host-country regulators should not exclude other forms of resolution such as MPOE, which may also be an adequate choice for other jurisdictions (if not for the U.S.) and their financial institutions. The general argument according to which diversity mitigates susceptibility to systemic risk would also apply in favour of allowing both SPOE and MPOE approaches, as long as such approaches are conclusive and transparently communicated to other regulators and to the market.

We would hope that you find our comments and concerns constructive and would like to thank you in advance for taking them into consideration for your future work on the resolution of Systemically Important Financial Institutions.

Yours sincerely,

Guido Ravoet
Chief Executive

cc. Mr Cyrus Amir-Mokri, Assistant Secretary for Financial Institutions, U.S. Treasury Department

cc. Mr Mark E. Van Der Weide, Deputy Director, Banking Supervision and Regulation, Federal Reserve