The voice of banking
& financial services

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
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Comments@fdic.gov

20th March 2014

Dear Mr Feldman,

Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy

This is the British Bankers' Association's response to the consultation on the above topic; we welcome the opportunity to provide our views. The BBA represents more than 170 banks operating in the UK.

The BBA welcomes the publication of the proposal and supports the FDIC's efforts to implement the *Key Attributes for Effective Resolution Regimes for Financial Institutions* agreed by the Financial Stability Board. The Single Point of Entry strategy has clearly been developed in the context of the structure of US-based institutions and has relevance to many others. The comments below focus on the aspects of the proposal of particular interest to non-US institutions.

Disparate Treatment

We recognise that the nature of resolution requires the resolution authority to have a limited degree of discretion in how creditors are treated, subject to the safeguard that creditors are left no worse off than they would have been under bankruptcy. Such discretion should only be exercised if necessary to maximise value for all creditors or to preserve critical operations.

Capital and Debt Levels at the Holding Company

The request for comment seeks views on the use of the leverage ratio as a measure of capital. The limitations of the leverage ratio are well documented and we therefore concur with the Basel Committee that the leverage ratio should be viewed as a backstop, with capital requirements set on a risk adjusted basis. Wherever possible, we urge that decisions on the approach to capital requirements be coordinated through the Basel process to ensure coherent requirements across jurisdictions in the interests of financial stability.

In terms of debt requirements, we believe the structure of the requirement should reflect the intended resolution strategy. As the SPOE strategy is premised on the equitable down streaming of loss absorbing resources from the holding company to operating subsidiaries, any requirement for externally-raised loss absorbing capacity at foreign subsidiaries is unnecessary for achieving effective resolution. We therefore recommend that, in setting any requirement at the subsidiary level, care is taken to avoid dilution of loss absorbing capacity at the parent. Due consideration should also be given to possible unintended consequences and the potential reduction in efficiency under normal market conditions.

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Treatment of Foreign Operations of the Bridge Financial Company

As the request for comment notes, a subsidiarisation requirement would not resolve concerns stemming from the resolvability of a cross-border group. In particular, we identify that foreign subsidiaries and branches can be ring-fenced equally and that it is not the legal form but the perceived willingness of the home authority to act equitably that motivates ring-fencing. Furthermore, if host authorities lack confidence this can incentivise them to require the subsidiary to hold sufficient capital to prevent losses by creditors upon failure. Unlike with a branch structure, a forced subsidiarisation requirement can also complicate the flow of capital and liquidity within a group, necessitating formal agreements between parent and subsidiaries. As recently highlighted by the Bank of England's Prudential Regulation Authority (Consultation Paper CP4/14: Supervising International Banks), the ability of banks to have international branches is important to an open world economy.Groups should therefore retain flexibility to determine their structure, with their resolution strategies tailored to reflect this.

Cross-Border Cooperation

Measures to enhance coordination between home and host authorities should be a priority given that the relationship between authorities is a key factor in the success of cross-border resolutions. It is therefore reassuring that the FDIC has focussed on working with international counterparts such as the Bank of England to enhance working relationships and develop common approaches. This must be complemented by joint work through Crisis Management Groups to agree on strategies for individual firms. The importance of coordination applies equally to action taken under both Title I and Title II.

The draft Notice contains little discussion of the steps the FDIC would take to support the resolution of foreign institution. For example, the Bank Recovery and Resolution Directive explicitly provides powers for a European resolution authority to recognise and facilitate a foreign authority's resolution of a firm headquartered outside the EU. We encourage the US authorities to ensure that resolution under such foreign jurisdictions does not constitute grounds for contractual default on the part of US counterparties of the resolved foreign firm.

Effectiveness of the SPOE Strategy

We note that the proposed approach is a backstop to resolution under Title I and that it would only be used if resolution under bankruptcy would have adverse effects on financial stability and if Title II would avoid or mitigate those effects. That being said, we believe that the effectiveness of the SPOE strategy in mitigating these effects could be limited by the proposed time limit on the operation of the bridge financial company. We fear that the 180-270 days horizon could inadvertently increase contagion risk from fire sales and therefore increase losses for creditors. In contrast, the BRRD places a duty on the resolution authority to terminate a bridge as soon as possible but with discretion over the timeframe subject to constraints imposed by statutory objectives. We therefore recommend that further consideration be given to this point and that the FDIC be granted the discretion to judge when to dispose of the assets of the bridge holding company.

We would be happy to provide further details on any of the issues outlined above.

Yours sincerely,

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