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EBF ref 0064-2011
UW

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Brussels, 28 February 2011

Subject*:** ***Advanced Capital Adequacy Framework – Basel II; Establishment of a Risk-Based Capital Floor

OCC Docket ID OCC-2010-0009

Federal Reserve Board Docket No. R-1402, RIN No. 7100-AD62

FDIC RIN 3064-AD58

Dear Sirs,

The European Banking Federation (EBF) represents the interests of around 5000 banks from 31 countries, covering all of the European Union as well as the member countries of the European Free Trade Association. An important number of these institutions have significant presence in the U.S. and are accordingly affected by U.S. legislation. The EBF therefore closely follows regulatory developments in the U.S. In doing so, we work together with the Institute of International Bankers, of which we are a member.

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In response to the above-named consultation, the European Banking Federation would like to bring to your attention our concern regarding the application of the so-called "Collins Amendment" provisions of Section 171 of the Dodd Frank Act to non-U.S. institutions.

Although Section 171 explicitly excludes controlling foreign organisations of U.S. holding companies, the EBF has noted that the consultation includes a question on the application of such a floor to foreign banking organisations' capital adequacy:

> *"Question 1. How should the proposed rule be applied to foreign banks in evaluating capital equivalency in the context of applications to establish branches or make bank or nonbank acquisitions in the United States, and in evaluating capital comparability in the context of foreign bank FHC declarations?"*

The EBF is concerned about this question, which seems to imply that non-U.S. banks would have to comply with the U.S. minimum capital standards prescribed under the Collins Amendment in order to be allowed into the U.S. This would be as opposed to the current situation, where the Federal Reserve assesses the capital of non-U.S. banks for such purposes by relying, to a large extent, on the capital requirements under the home jurisdiction of the respective non-U.S. bank.

Extending the Collins Amendment's capital floors extraterritorially as implied by Question 1 would:

- interfere with home jurisdictions' authority to regulate the capital of their banks (i.e. for EU banks, the EU and its member states);
- run counter to the international capital requirements agreed to in the Basel Committee on Banking Supervision;
- submit European and other non-U.S. banks willing to remain or become active in the U.S. to a double capital standard with respective cost and bureaucratic burden for them; and
- contradict, in fact, the very Dodd-Frank Act provision which the U.S. banking agencies are required to implement, since Section 171(a)(3) expressly states that the term "depository institution holding company" in Section 171 does not mean to include the foreign bank itself[1] (but we recognise that the term includes a foreign bank's U.S. intermediate bank holding company subsidiary).

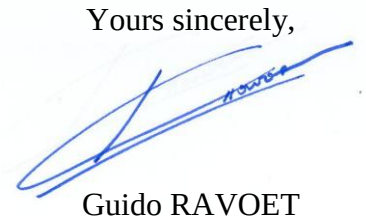
The EBF would therefore respectfully urge the regulatory authorities to refrain from such an extraterritorial application of the Collins Amendment's capital floors to non-U.S. banks. The Federation also wishes to explicitly express its support for the response of the IIB to the current consultation.

[1] See also, Letter, dated May 21, 2010, from FDIC Chairman Bair to Lawrence R. Uhlick, CEO, Institute of International Bankers, ("It is not the intent nor, we believe, a correct reading of [Section 171] that these requirements would apply to any bank not chartered in the United States").

In addition, please be aware that the Federation and its members have also brought the foregoing considerations to the attention of the European Commission and to some national governments and regulators.

We thank you for your consideration of our concern and look forward to reading the agencies' final rules.

Yours sincerely,



Guido RAVOET