

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
United States
www.fdic.gov

Chris Barnard

16 April 2013

- 12 CFR Part 330
- Deposit Insurance Regulations; Definition of Insured Deposit

Dear Sir.

Thank you for giving us the opportunity to comment on your proposed rule: Deposit Insurance Regulations; Definition of Insured Deposit.

The FDIC is proposing to amend its deposit insurance regulations, with respect to deposits payable in branches of United States insured depository institutions (U.S. banks) outside of the United States. The proposed rule would clarify that deposits in these foreign branches of U.S. banks are not FDIC insured deposits. This would be the case whether or not they are dually payable both at the branch outside the United States and at an office within the United States. The purpose of this proposed rule is to preserve confidence in the FDIC deposit insurance system, ensure that the FDIC can effectively carry out its critical deposit insurance functions, and protect the Deposit Insurance Fund against the uncertain liability that it would otherwise face as a global deposit insurer.

Definition of insured deposit

The proposed definition of insured deposit states that an obligation of a U.S. bank that is carried on the books and records of a foreign branch shall not be an insured deposit for the purpose of the deposit insurance regulations, even if the obligation is dually payable.¹ In principle I support this proposed definition of insured deposit. It is sensible, practicable and operational and will ensure that the Deposit Insurance Fund will be protected from potential global liability.

¹ See proposed § 330.3(e).

National depositor preference

The release also refers to FDIC Advisory Opinion 94-1,² which addresses whether the term “deposit liability” would include, or exclude, obligations payable solely at a foreign branch of a U.S. bank. The Advisory Opinion concluded that, to qualify as a deposit liability, the controlling deposit agreement would have to specify that the obligation is payable in the United States; obligations payable solely at a foreign branch of a U.S. bank were deemed to be excluded from the term “deposit liability” for purposes of national depositor preference.

I would caution that this advisory opinion, as it stands, would imply that obligations payable solely at a foreign branch of a U.S. bank would rank below both domestic and dually payable. This would be inconsistent with the Financial Stability Board’s Key Attributes of Effective Resolution Regimes for Financial Institutions,³ which states in section 7.4 that: “National laws and regulations should not discriminate against creditors on the basis of their nationality, the location of their claim or the jurisdiction where it is payable.” I would recommend further consideration of this issue going forward.

Yours faithfully

C.R.B.

Chris Barnard

² Available at: <http://www.fdic.gov/regulations/laws/rules/4000-8720.html>

³ Available at: http://www.financialstabilityboard.org/publications/r_111104cc.pdf