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Submitted via Comments@FDIC.gov

February 18, 2014

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

Re: FDIC's Notice and Request for Comments on the Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy (FR Docket No. 2013-30057)

Ladies and Gentlemen:

The Institute of International Bankers ("IIB") appreciates the opportunity to comment on the notice published by the Federal Deposit Insurance Corporation (the "FDIC") in connection with its developing a "single point of entry" ("SPOE") strategy for implementing the Orderly Liquidation Authority provisions of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[1] The IIB is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of banking and financial institutions headquartered in over 35 countries around the world doing business in the United States.

The SPOE Notice provides details regarding the FDIC's plans to take a SPOE approach in applying its Title II authority to the resolution of U.S.-headquartered global systemically important banks ("U.S. G-SIBs") and highlights certain issues that have been identified in connection with developing the SPOE strategy. One of these issues – the treatment of foreign operations of U.S. G-SIBs – implicates important policy considerations regarding the broader question of the relationship between home country and host country authorities in connection with the cross-border resolution of internationally active banks by home country authorities. These broader considerations are of particular interest to the IIB and its members and are the focus of our comments. Specifically, we address concerns that arise in the event a host country

[1] "The Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy," 78 Fed Reg. 76614 (December 18, 2013) (the "SPOE Notice").

seeks to ring-fence the local operations of non-domestic banks. In addition, we discuss briefly general policy considerations raised by a subsidiarization requirement.

We agree that host country ring-fencing by its very nature complicates and impedes SPOE cross-border resolution.[2] This is certainly the case with respect to host country "post-failure" ring-fencing, but "pre-failure" ring-fencing can lead to similarly counter-productive consequences, as discussed below. As a general policy matter, we do not favor "mandatory' or "forced" subsidiarization, which we distinguish from the voluntary decision by a banking organization to structure its operations as separately incorporated entities rather than as branches or agencies (or some combination of the two). Regarding the relationship between host country ring-fencing and a subsidiarization requirement, we believe that such a requirement does not necessarily entail ring-fencing, and ring-fencing may occur in the absence of a subsidiarization requirement.

Host Country Ring-Fencing Requirements

For purposes of this discussion, we use the term "ring-fence" to refer to actions taken by a host country with respect to the operations of a non-domestic bank in the host country whereby those operations are isolated ("ring-fenced") from the bank's operations outside the host country by means of regulatory restrictions on or prohibitions against the transfer of assets or flow of funds from the host country operations to those outside the host country. In a pre-failure context, ring-fencing may take a variety of forms, including stand-alone host country capital and liquidity requirements which significantly limit outward-bound transfers by the host country operations and compliance with which may be determined in a manner that minimizes or precludes in some measure support that may be available from operations outside the host country. In a post-failure context, host country ring-fencing typically entails providing a priority to the payment of third-party liabilities attributable to the ring-fenced operations and marshalling the assets of those operations (and perhaps also marshalling assets of operations outside the host country that are located in the host country) to pay off all such liabilities in their entirety prior to making those assets (should any remain after satisfying the ring-fenced-protected claims) available to pay off liabilities of operations of the non-domestic bank outside the host country.

The impediments to SPOE cross-border resolution posed by host country post-failure ring-fencing are clear. Likewise, host country pre-failure ring-fencing can lead to counter-productive consequences:

- It is, of course, true that during a time of crisis host country post-failure ring-fencing can have procyclical effects on a non-domestic bank's operations and creditors outside the host country, and its impact potentially can worsen a crisis in those other countries. However, host country pre-failure ring-fencing can have its own negative procyclical

[2] See id.at 76623.

effects on financial stability by diminishing a non-domestic bank's ability to respond to stress in operations outside the host country on an ongoing basis.

- The experience during the financial crisis is instructive on the perils that can result from host-country pre-failure ring-fencing. As observed by the Committee on the Global Financial System, "the ability to shift funds across jurisdictions was an important instrument of crisis management for many international banks."[3] Host country pre-failure ring-fencing discounts the value of preserving flexibility to move capital and liquidity during a crisis from jurisdictions which are relatively stable, and where funding can be raised at relatively low cost, to jurisdictions where the greatest need for capital and liquidity arise. Pre-failure ring-fencing of pools of capital and liquidity in a host country not only can contract the supply of credit, it also can hinder the ability of internationally active banks to react to future crises with coordinated, centralized responses.[4]

- Host country pre-failure ring-fencing also can result in the inefficient and duplicative allocation of capital to the extent that a non-domestic bank would be required to capitalize its operations in the host country independently of the consolidated capital of the bank.

- Pre-failure ring-fencing of capital and liquidity in host countries reduces the resources available to home country authorities in seeking to stabilize a crisis. Such action can reduce incentives to cooperate on a global resolution, and could, perversely increase the likelihood of failures spreading across multiple jurisdictions.[5]

In addition to the foregoing, imposing a host country pre-failure ring-fencing regime ignores the calculus that a non-domestic bank likely would undertake in considering whether to support its host country operations in a crisis. The reputational and legal consequences of a bank permitting its operations in a host country to fail may be quite significant, especially where the host country operations are substantial relative to the bank's other international operations. In a crisis, when the bank itself might already be in a potentially weakened state and the markets are

[3] See Committee on the Global Financial System, Funding Patterns and Liquidity Management of Internationally Active Banks, CGFS Papers No. 39 at 33 (May 2010).

[4] See id. at 18, 33 – 34. With respect to cross-border operations conducted through subsidiaries, the SPOE Notice states that "[i]ndependent subsidiaries could also arguably facilitate a SPOE strategy by having well-capitalized subsidiaries with strong liquidity that would continue operating while the parent holding company was placed in resolution." 78 Fed. Reg. at 76623. Where a subsidiary is subject to a host country pre-failure ring-fencing regime, the structural rigidities inherent in such a regime raise strong countervailing considerations that should be factored into the assessment of any potential benefits.

[5] As such, host-country pre-failure ring-fencing is inconsistent with the Financial Stability Board's "Key Attributes of Effective Resolution Regimes for Financial Institutions", which evidences a clear preference for coordinated resolution led by the home country authority.

sensitive to any sign of risk, such action (or inaction, as it were) could threaten the bank's ability to survive as a going concern.

Mandatory Subsidiarization

We strongly favor a regime which provides banks the flexibility to structure their cross-border operations as they best see fit to the achievement of their business objectives. Thus, banks should be permitted to operate through subsidiaries, branches or some combination of the two, with the ability to select different forms to operate in different countries. From this perspective, we understand references to "subsidiarization" requirements in the SPOE Notice to contemplate only a regime which denies banks the choice to structure their operations as they best see fit and instead mandates that they operate solely through separately incorporated entities and not through branches or agencies. We do not see any compelling policy reason to impose such a requirement.

As recognized in the SPOE Notice, such "mandatory" or "forced" subsidiarization presents certain features that might facilitate cross-border resolution and others that might complicate or impede the process.[6] In contemplating whether to impose a subsidiarization requirement consideration also should be given to the potential barriers to entry that such structures erect and the impediments to future expansion through such "mandated" subsidiaries. Moreover, where such a requirement would call for "rolling up" existing branches into one or more separately incorporated entities it would impose transaction, operational and regulatory costs which might be substantial and would have to be carefully assessed to determine whether they are outweighed by the resulting perceived benefits. Similarly, significant costs, including capital-related costs, are associated with establishing "mandated" subsidiaries as compared to permitting the option to conduct operations through branches or agencies.

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We appreciate the consideration of our comments. Please contact the undersigned if we can provide any additional information or assistance.

Sincerely,

Richard Coffman
General Counsel

[6] See 78 Fed. Reg. at 76623.