SULLIVAN & CROMWELL LLP

April 8, 2019

Regulatory Tailoring

Federal Bank Regulators Propose Significant Revisions to the Application of Prudential Standards for Foreign Banking Organizations, Seek Comment on Whether to Impose Standardized Liquidity Requirements on Their U.S. Branches and Agencies, and Propose Significant Revisions to Resolution Planning Requirements

Earlier today, the Federal Reserve, by a vote of 4-1, adopted two proposed rules that would tailor how certain aspects of the post-crisis bank regulatory framework, including certain capital and liquidity requirements and other prudential standards, apply to the U.S. operations of foreign banking organizations ("*FBOs*"). One of the proposed rules is to be issued jointly by the Federal Reserve, OCC, and FDIC.[1] The other was issued solely by the Federal Reserve.[2] The Federal Reserve also adopted, by a vote of 4-1, a proposal to be jointly issued with the FDIC that would revise the resolution planning requirements for FBOs and U.S. bank holding companies ("*BHCs*").[3]

As discussed in our Memorandum to Clients published in November 2018, the federal bank regulators have proposed to tailor how certain capital, liquidity and other prudential requirements apply to large U.S. banking organizations. The FBO tailoring proposals released today would use similar tailoring categories, based on the characteristics of an FBO's U.S. operations. The Federal Reserve would not, however, increase the $50 billion U.S. non-branch asset threshold for the U.S. intermediate holding company ("*IHC*") requirement. In a number of cases, the effect of the proposed tailoring on a given FBO would depend on the extent of its U.S. operations' weighted short-term wholesale funding or cross-jurisdictional activity, as measured by the proposal.[4] In addition, the Federal Reserve also requests comment on whether it should impose standardized liquidity requirements—such as an LCR-based requirement—on the U.S. branches and agencies of FBOs. The application of any such requirements would be subject to a separate notice-and-comment rulemaking.

The proposal on resolution planning would create two- or three-year filing cycles for BHCs and FBOs subject to resolution planning requirements and exempt domestic Category IV BHCs from resolution planning requirements. Domestic BHCs and certain FBOs would alternate between submitting "full" and "targeted" resolution plans, and certain FBOs would file a new form of "reduced" resolution plan.

Notably, Governor Brainard issued a separate Statement[5] in which she declined to support the proposals. The principal source of her disagreement was that the proposals did not include liquidity requirements for the U.S. branches and agencies of FBOs. Governor Brainard also expressed concern about the reduction in resolution plan filing requirements.

We will address these proposals in forthcoming memoranda to clients. Comments on the proposals are due by June 21, 2019.

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ENDNOTES

1 OCC, Federal Reserve, FDIC, *Proposed changes to applicability thresholds for regulatory capital requirements for certain U.S. subsidiaries of foreign banking organizations and application of liquidity requirements to foreign banking organizations, certain U.S. depository institution holding companies, and certain depository institution subsidiaries* (Apr. 8, 2019), *available at* : https://www.federalreserve.gov/newsevents/pressreleases/files/foreign-bank-fr-notice-2-20190408.pdf.

2 Federal Reserve, *Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies* (Apr. 8, 2019), *available at* https://www.federalreserve.gov/newsevents/pressreleases/files/foreign-bank-fr-notice-1-20190408.pdf.

3 Federal Reserve, FDIC, *Resolution Plans Required* (Apr. 8, 2019), *available at* https://www.federalreserve.gov/aboutthefed/boardmeetings/files/resolution-plans-fr-notice-20190408.pdf.

4 In today's interagency tailoring proposal, the Federal Reserve also proposes to revise its earlier tailoring proposal for large U.S. banking organizations to apply LCR and NSFR requirements to a Category IV BHC with $50 billion or more in weighted short-term wholesale funding. Per the tailoring proposals for large U.S. banking organizations, a domestic BHC would be in Category IV if it is not a G-SIB, has between $100 and $250 billion in total consolidated assets and has less than $75 billion in each of the four proposed risk-based indicators: cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance-sheet exposure.

5 Statement by Governor Lael Brainard (Apr. 8, 2019), *available at* https://www.federalreserve.gov/newsevents/pressreleases/3B1F641BEB4A485B994EBC38165F0F3B.htm.

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