

Federal Reserve Board Reaches Over SEC for US Broker-Dealers of Foreign Banking Organizations

Introduction

The Dodd-Frank Wall Street Reform and Consumer Protection Act directs the Board of Governors of the Federal Reserve System (Federal Reserve Board) to impose enhanced prudential standards on bank holding companies, including foreign banking organizations, with total global consolidated assets of \$50 billion or more. To this end, the Federal Reserve Board recently proposed rules that would implement the enhanced prudential standards (as well as some early remediation requirements). The enhanced prudential standards include risk-based capital and leverage requirements, liquidity standards and risk management measures, among other things.

Background

Currently, foreign banking organizations operate in the US under a variety of structures. Some conduct activities through a US branch or agency, while others own a US depository institution directly or through a US-based holding company. Most large foreign banking organizations also conduct a range of nonbank activities through separate nonbank subsidiaries, which may or may not be under the umbrella of a US-based holding company. Federal and state regulators other than the Federal Reserve Board are primarily responsible for supervising and regulating nonbank subsidiaries. For example, the Securities and Exchange Commission (SEC) is the primary regulator of broker-dealers that are owned by foreign banking organizations.

Proposal

The standards for foreign banking organizations proposed by the Federal Reserve Board are consistent with standards it previously proposed for large US bank holding companies. But there is a supplemental enhanced standard for certain foreign banking organizations. Foreign banking organizations that have total global consolidated assets of \$50 billion or more and combined US assets (excluding US branch and agency assets) of \$10 billion or more would be required to form a US intermediate holding company. The intermediate holding company would generally serve as a US top-tier holding company for the organization's US subsidiaries and would be directly subject to enhanced prudential standards, including standards for capital and liquidity, on a consolidated basis. The Federal Reserve Board would have the authority to examine any US intermediate holding company and any of its subsidiaries. Significantly, the US intermediate holding company would be treated like a bank holding company whether or not it actually owned a bank in the US.

The potential effects of the Federal Reserve Board's proposal are far reaching. One such effect is to bring broker-dealers owned by foreign banking organizations under the oversight of the Federal Reserve Board. Thus, for example, the Federal Reserve Board's capital requirements would in some ways supplant the SEC's capital requirements for broker-dealers.

Conclusion

This publication highlights some aspects of the Federal Reserve Board's proposal. The proposal is long and complex, and a discussion of every aspect of it is beyond the scope of this publication. For additional information about how it might affect your organization, please contact one of the Squire Sanders lawyers noted below.

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