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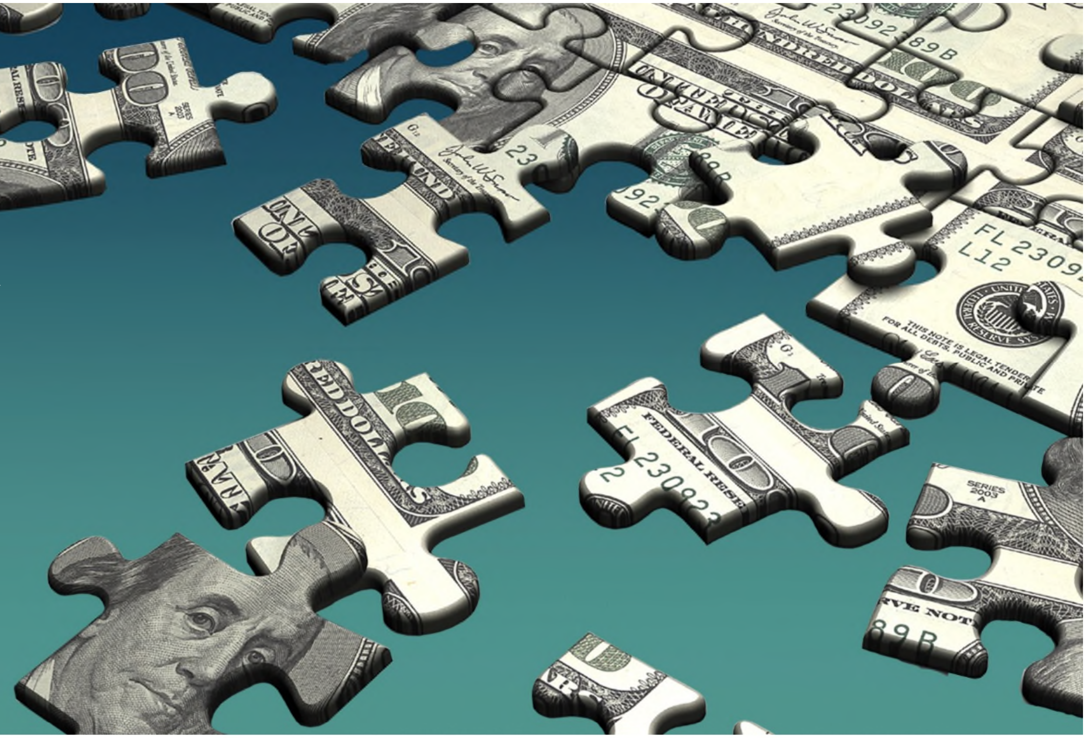

Update on Bank Regulatory Developments

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Agenda

- Federal Reserve Control Proposal
- Federal Reserve Tailoring Proposal for Foreign Banks
- Federal Reserve and FDIC Proposals for Resolution Planning

Federal Reserve Control Proposal

- Definition of “control” is a fundamental aspect of the US Bank Holding Company Act
  - Determines which entities are subject to Section 4 of the BHCA
  - Determines which entities are “banking entities” subject to the Volcker Rule
  - Determines whether an investor in a bank/BHC must itself register as BHC
- Same framework applies for bank and nonbank investments
- Same framework applies for domestic (US) and foreign (non-US) investments

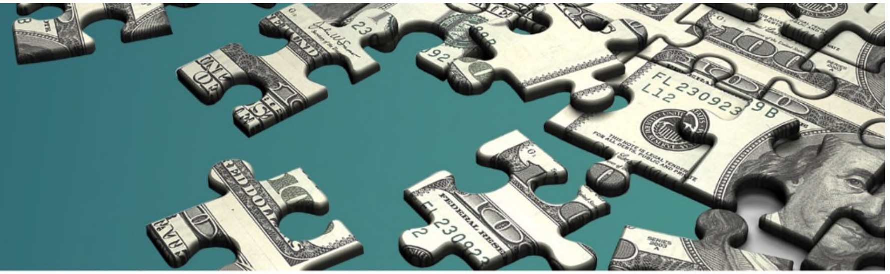
Federal Reserve Control Proposal

- BHCA defines control as:
  - Owning/controlling 25% or more of a class of voting securities
  - Controlling election of majority of directors, trustees, general partners
  - Having the power to exercise a ***"controlling influence"*** over another company, after notice and opportunity for hearing
- Controlling influence rules have developed for decades through informal/unpublished Fed decisions on individual transactions
- Over the years, Fed has shifted away from focus on *actual control*

Federal Reserve Control Proposal

- Current Framework – Indicia of Control
  - ❑ Voting Shares
  - ❑ Board Representation
  - ❑ Significant Business Relationships
  - ❑ Non-Voting Equity
  - ❑ Officer/Employee Interlocks
  - ❑ Contractual Covenants/Veto Rights
- Limited actionable, written precedent outside a few “bright line” rules
- Lack of legal certainty for many investments/structures
- Impact on minority equity investments particularly pronounced in fintech sector (business relationships)
- Resolution of controlling influence issues often requires protracted engagement with Fed staff—both for new investments and divestitures of control

Federal Reserve Control Proposal



- Proposal to revise controlling influence rules issued by the Fed on April 23, 2019
  - 60-day comment period will conclude on July 15
- Intent is to clarify and provide greater transparency and predictability with respect to controlling influence determinations
  - Articulating/formalizing current Fed policy
  - Adopting more flexible/relaxed standards in certain areas
  - Adopting more restrictive standards in other areas

Federal Reserve Control Proposal

Tiered Framework of Presumptions

	Less than 5% voting	5-9.99% voting	10-14.99% voting	15-24.99% voting
Directors	Less than half	Less than a quarter	Less than a quarter	Less than a quarter
Director Service as Board Chair	N/A	N/A	N/A	No director representative is chair of the board
Director Service on Board Committees	N/A	N/A	A quarter or less of a committee with power to bind the company	A quarter or less of a committee with power to bind the company
Business Relationships	N/A	Less than 10% of revenues or expenses	Less than 5% of revenues or expenses	Less than 2% of revenues or expenses
Business Terms	N/A	N/A	Market Terms	Market Terms
Officer/Employee Interlocks	N/A	No more than 1 interlock, never CEO	No more than 1 interlock, never CEO	No interlocks
Contractual Powers	No management agreements	No rights that significantly restrict discretion	No rights that significantly restrict discretion	No rights that significantly restrict discretion
Proxy Contests (directors)	N/A	N/A	No soliciting proxies to replace more than permitted number of directors	No soliciting proxies to replace more than permitted number of directors
Total Equity	Less than one third	Less than one third	Less than one third	Less than one quarter

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Federal Reserve Control Proposal

- Tiered framework largely satisfies the objectives of clarity and transparency, though maintains Fed's general approach of focusing on potential rather than actual control
- Predictability will depend on Fed's commitment to honor the presumptions

> ***Absent unusual circumstances, the Board generally would not expect to find that a company controls another company where the first company is not presumed to control the second company under the [Proposal].***

- Revival of presumption of non-control for investors holding less than 5% of voting shares
  - No business relationships test, no controlling influence based on consent/veto rights (including rights arising in connection with a financing arrangement for the same company)
- More restrictive framework for investors holding 15%-24.99% of voting shares
  - Control presumed if investor generates just 2% of revenues/expenses, has any non-market terms relationships, any limiting contractual rights, or any interlocks
  - Business relationship test at this level is more restrictive than current Fed policy

Federal Reserve Control Proposal

Critiques of the Tiered Framework and Areas for Industry Comment

- Overall, business relationship limits still problematic for many BHC/FHC investors, especially at higher end of the voting interest spectrum
  - Particularly true for fintech and other startups with limited/unpredictable revenue
  - Query appetite among BHC investors for taking ~20% voting interest in a fintech or other portfolio company where business relationships are all but prohibited (2% of revenues/expenses)
- No consideration given to presence of larger, countervailing (even majority) shareholders
- Proposal does not confirm that presumed non-controlling investments below 5% of voting shares are also “passive” for purposes of section 4(c)(6)
- Concept of “limiting contractual rights” very broad; no allowance for rights related to matters that would significantly and adversely affect a particular minority investor or class of minority investors

Federal Reserve Control Proposal

Presumptions Outside the Tiered Framework

- "Advise Plus 5" Presumption for Investment Funds
  - Proposal would include a presumption of control whenever a BHC (i) serves as investment adviser to an investment fund and (ii) controls 5% or more of a class of voting securities or 25% or more of total equity
  - Would apply to both registered and unregistered funds
  - Seeding period exception, but limited to just one year (contrary to Volcker)
- Consolidation under US GAAP
  - Proposal would include a presumption of control with respect to any entity that is required to be consolidated under US GAAP
  - Potentially significant impact on ABCP conduits in particular (FBOs)

Federal Reserve Control Proposal

Divestitures of Control

- Current Framework
  - Traditionally, divesting control of an existing subsidiary required reduction of interest to at least 10% and often 5% of voting shares, with no other relationships
- Proposed Framework
  - Retains general concept of residual control requiring that relationship be reduced to a level below what would have been permitted *ex ante*
  - But proposal would liberalize these standards, generally permitting recognition of divestiture at 15% and, after a two-year waiting period, at 15%-24.99% (if no presumptions are triggered)

Federal Reserve Control Proposal

Other Key Issues and Takeaways

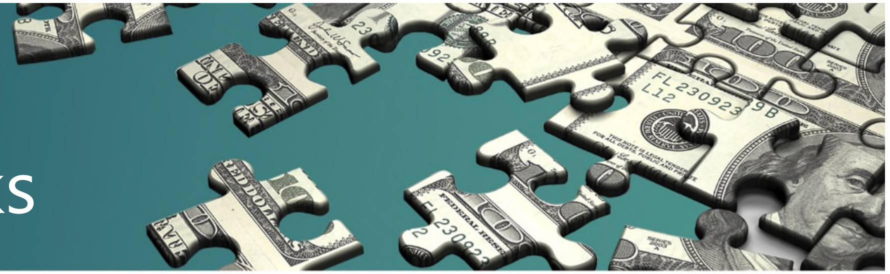
- Downsides of Clarity and Transparency
  - As “soft” law is committed to regulation through notice and comment rulemaking, more difficult to take positions with respect to certain “borderline” investments (including those outside the US with little or no US nexus or US supervisory interest)
  - Proposal may require potentially significant overhaul of BHCA compliance policies and procedures, monitoring systems, global mapping of relationships
- Rigid, Bright Line Approach
  - No “credit” for the absence of other indicia of control (e.g., where an investor has no board member or where influence is limited by an unaffiliated, larger shareholder)

Federal Reserve Control Proposal

Other Key Issues and Takeaways

- Impact on Existing Investments/Structures
  - No discussion in proposal regarding impact on existing investments and relationships or potential need for phase-in period/grandfathering
  - Not clear what the impact will be on entities that have entered into passivity commitments
- Activists and Other BHC Investors
  - Same rules will apply to investors in publicly trades BHCs
  - More permissive environment for activist funds and other investors to seek change—e.g., board representation/roles, proxy contests

Federal Reserve Tailoring Proposal for Foreign Banks



- Dodd-Frank Act § 165 imposed enhanced prudential standards (EPS) on larger US BHCs/SLHCs and FBOs
  - Implemented by Regulation YY in 2014
- EGRRCPA § 401 increased threshold for applying EPS and authorized the Fed to tailor application of EPS
- The Fed issued proposals in October 2018 to tailor EPS for US BHCs/SLHCs and to modify liquidity and other EPS
- Comparable proposals for FBOs and IHCs issued in April 2019
  - Comment period ending June 21

Federal Reserve Tailoring Proposal for Foreign Banks

- Purpose of the FBO proposal
  - Align FBO rules with BHC/SLHC proposal consistent with national treatment and competitive equity
  - Implement EGRRCPA policy to tailor EPS to size and risk profile of financial institution
  - Implement Fed policy to make regulation more simple, transparent and efficient
  - Protect US financial stability from risk posed by US operations of FBOs

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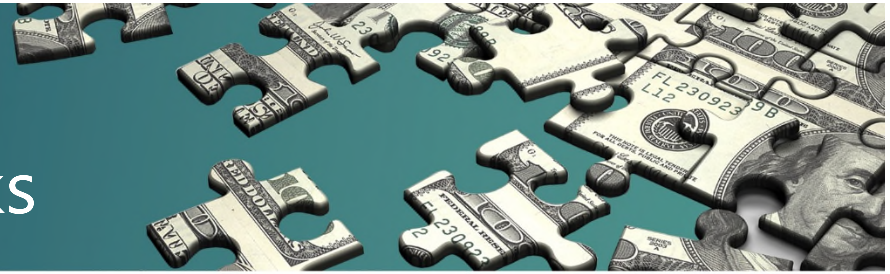
Federal Reserve Tailoring Proposal for Foreign Banks

- Summary of Impact of Proposal
  - The size of and presence/absence of risk factors at US operations of FBOs will determine the level of stringency of EPS in three risk level "categories"
  - Both the FBO and its IHC are categorized on the basis of the combined US operations -- this means for example that the IHC can be subjected to higher EPS (other than capital) by virtue of risk factors in the US branches and agencies
  - Meanwhile, the Fed is also asking for comment on whether branches and agencies should be subject to standardized liquidity requirements, i.e., LCR and NSFR, that apply to US banking organizations
  - The proposal would strengthen the trend towards ring fencing of an FBO's US operations and would create more regulatory incentives for FBO's to reduce their US footprint

Federal Reserve Tailoring Proposal for Foreign Banks

- US risk profile factors used in determining the EPS category
  - **Combined US Assets:** Sum of the consolidated assets of each top-tier US subsidiary of an FBO (excluding so-called “2(h)(2) companies”) and the total assets of each US branch and US agency
  - **Cross-Jurisdictional Activity (“CJA”):** Sum of the cross-jurisdictional assets and liabilities of an FBO’s combined US operations or its US IHC, excluding intercompany liabilities and collateralized intercompany claims
  - **US Weighted Short-Term Wholesale Funding (“wSTWF”):** Weighted amount of funding obtained from wholesale counterparties, retail brokered deposits and sweeps with a remaining maturity of one year or less, including exposures between the US operations and non-US affiliates
  - **US Off-Balance Sheet Exposure:** Difference between the total exposure and on-balance sheet assets of an FBO’s combined US operations
  - **US Nonbank Assets**: Sum of the assets of US nonbank subsidiaries and equity investments in unconsolidated US subsidiaries (excluding 2(h)(2) companies)

Federal Reserve Tailoring Proposal for Foreign Banks



- Category II: FBOs and IHCs with (i) $700B or more in combined US assets or (ii) $100B or more in combined US assets and $75B or more in CJA would be subject to the following standards:

FBO (Combined US Operations)	US IHC
Liquidity risk management requirements, including daily FR 2052a reporting	Annual CCAR exercise and company-run and supervisory stress testing, including FR Y-14 reporting
Monthly internal liquidity stress testing	Annual capital planning, including assessment by Fed
Liquid asset buffer requirements	Monthly internal liquidity stress testing
SCCL	Modified SCCL
Home-country capital stress testing	US capital standards, including the SLR, CCB (if applicable) and AOCI recognition
Risk committee, risk management and chief risk officer requirements	Daily LCR and NSFR requirements

Federal Reserve Tailoring Proposal for Foreign Banks

- Category III: FBOs and US IHCs that are not in Category II but have (i) $250B or more in combined US assets or (ii) $100B or more in combined US assets and $75B or more of US nonbank assets, US wSTWF or US off-balance sheet exposure would be subject to the following standards:

FBO (Combined US Operations)	US IHC
Liquidity risk management requirements, including monthly FR 2052a reporting	Annual CCAR exercise and company-run and supervisory stress testing, including FR Y-14 reporting, but with biennial disclosure of company-run results
Monthly internal liquidity stress testing	Annual capital planning, including assessment by Fed
Liquid asset buffer requirements	Monthly internal liquidity stress testing
SCCL	Modified SCCL
Home-country capital stress testing	US capital standards, including the SLR and CCB (if applicable)
Risk committee, risk management and chief risk officer requirements	Daily LCR and NSFR requirements (reduced to 70 percent to 85 percent of the full requirements for IHCs with less than $75B in wSTWF)

Federal Reserve Tailoring Proposal for Foreign Banks

- Category IV: FBOs and US IHCs that are not in Categories II or III but have at least $100B in combined US assets would be subject to the following standards:

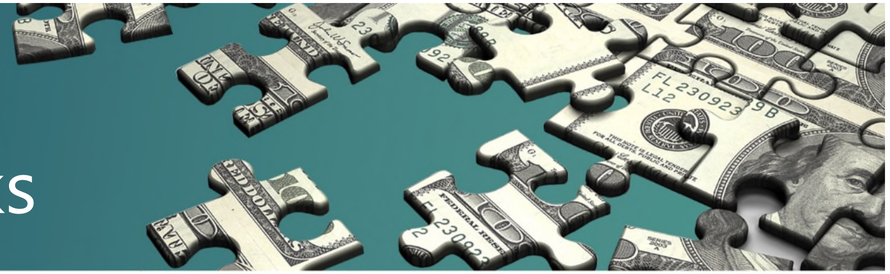
FBO (Combined US Operations)	US IHC
Reduced liquidity risk management requirements but still including monthly FR 2052a reporting	Biennial CCAR exercise and company-run and supervisory stress testing, including FR Y-14 reporting
Quarterly internal liquidity stress testing	Reduced annual capital planning, including assessment by Fed
Reduced asset buffer requirements	Quarterly internal liquidity stress testing
SCCL (only if the FBO has $250B or more in total consolidated assets on a global basis)	US capital standards
Home-country capital stress testing	Monthly LCR and NSFR requirements (reduced to 70 percent to 85 percent of the full requirements) if wSTWF is $50B or more
Risk committee, risk management and chief risk officer requirements	

Federal Reserve Tailoring Proposal for Foreign Banks

- Uncategorized: FBOs and US IHCs with at least $50B in global total consolidated assets would not be assigned to one of the Categories but would remain subject to certain prudential standards, including the following:

Uncategorized FBOs with these Assets		Requirements
Global Assets	**US Assets**	
$250B or more	Combined US assets of less than $100B	Would continue to be required to comply with US single-counterparty credit limits and home-country liquidity stress testing and capital requirements
$100B or more	US non-branch assets of $50B or more	Would continue to be required to establish a IHC
$100B or more	Combined US assets of $50B to $100B	Would continue to be required to satisfy US risk committee, chief risk officer and risk management requirements
$100B or more	Combined US assets of less than $100B	Would continue to be required to comply with home-country capital stress testing requirements
$50B to $100B	N/A	Would continue to be required to comply with US risk committee requirements

Federal Reserve Tailoring Proposal for Foreign Banks



- US branches and agencies of FBOs currently are not subject to standardized liquidity requirements (i.e., LCR and NSFR)
  - Fed has requested comment on whether it should impose standardized liquidity requirements on US branches and agencies
  - Contemplates imposing LCR-like requirement, but also may impose NSFR-like requirement
  - Calculation might be based on size and risk profile of combined US operations or asset size of US branch network
  - Would be subject to another round of notice and comment rulemaking before being adopted

Federal Reserve and FDIC Proposals for Resolution Planning

- The Fed and FDIC issued a proposal in April 2019 to revise resolution planning requirements for US BHCs and FBOs
- Resolution planning proposal would use the system of Categories from the tailoring proposals
  - Reduce the number of filers and frequency of submissions
  - Streamline the content required to be submitted in resolution plans
  - Revise the ways in which critical operations are identified
  - Clarify various aspects of the requirements
  - Establish a transition period for phasing in the revised requirements

Federal Reserve and FDIC Proposals for Resolution Planning

- FDIC also issued a pre-proposal in April 2019 indicating its intent to revise resolution planning requirements for US banks
  - Would categorize US banks into “Groupings” (analogous to “Categories”)
  - Conceptually similar to the resolution requirements in the interagency proposal for US BHCs and FBOs
- Trade associations have asked for comfort in the interim that no submissions will be required before the interagency proposal is finalized
  - FDIC has already delayed the next round of submissions for US banks until after its rulemaking process is completed