

**Impact of U.S. Regulatory Reform on Global Banks
Key Perspectives on the Major Areas**

Center for Transnational Legal Studies
Benjamin Strong Room
Federal Reserve Bank of New York
February 12, 2013

Concluding Remarks

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I want to thank Ernie Patrikis and Tom Baxter for hosting this impressive event. I also want to publicly acknowledge the visionary perspectives of the late Michael Gruson and Professor Ralph Reisner for organizing the Center and launching the publication of *Regulation of Foreign Banks & Affiliates in the United States* more than twenty years ago, which is now about to be published in its 7th edition. We are also grateful to President William C. Dudley and Sarah Dahlgren for their timely remarks.

In his welcoming remarks this morning, President Dudley urged those of us in the private sector to not "just say no" to regulatory reform. Instead, he urged us to embrace the goal of making the financial system safer and more efficient, and to suggest better ways to accomplish that goal if we think a particular regulatory reform rule doesn't work.

In many ways, I think we met that standard today, even if we all voted in favor of repealing the Swaps Pushout Rule! Let me mention a few ways in which we did that, as well as my initial takeaways from the panels today.

On ending the "too big to fail" problem, I think the joint paper on single-point-of-entry bail-in by the FDIC and the Bank of England represents one of the best examples of cross-border cooperation. I think we have made a lot more progress toward a genuine and workable solution to that problem than I think President Dudley has acknowledged.

In contrast, despite a valiant, articulate and very powerful defense by Mark Van Der Weide of the intermediate holding company requirement and the rest of the Federal Reserve's recently proposed FBO rule, I think both the UK's various ring-fencing proposals and the Federal Reserve's proposed FBO rule represent an unfortunate surrender – a waving of the white flag, if you will – in the battle for cross-border cooperation. I agree with Tom Baxter that the UK government started this modern "trade war" when they announced their retail ring-fencing proposal, and said that the one of the purposes of this proposal was to make it easier to save their

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domestic retail banks while cutting loose the international wholesale arms of their global banks in the next financial crisis. But I don't think this is an excuse for the Federal Reserve's decision to respond tit-for-tat, instead of urging the UK government to return to its better lights.

If host country ring-fencing after a G-SIFI gets in trouble is bad, I don't see how preemptive ring-fencing before the SIFI gets into trouble is the solution, or will discourage ring-fencing after the fact. I agree with Rodge Cohen that it is hard to distinguish this type of host country protectionism from the trade wars spawned in the 1930s by the Smoot-Hawley Act.

But in the spirit of compromise, as urged by President Dudley, let me make three constructive suggestions:

First, as Michael Wiseman suggested, the Federal Reserve should conduct and publish the results of an economic impact study. The question they should address is what would the economic impact be on the world's banking system if every major jurisdiction adopted a rule similar to the Federal Reserve's FBO proposal.

Second, the Federal Reserve should consider whether there is some compromise between the sort of *extreme* reliance on home country capital and supervision reflected in SR 01-01 and the lack of *any* meaningful credit for home country capital, liquidity and supervision reflected in the IHC requirement in the FBO proposal. Such a compromise would not trap capital and liquidity in the United States as if by an iron ring, but instead would allow the IHC to release capital and liquidity to other parts of the global bank during times of stress, if necessary and appropriate. It would also give the IHC appropriate credit (though not 100% credit) for its parent's home country capital, liquidity and supervision. Would such a compromise be more consistent with a practical application of the principle of national treatment? I think it would.

Third, I think the reason why the governments around the world are resorting to self-protective measures is because they have not done the hard work of agreeing on a rational system of what the International Monetary Fund calls burden-sharing. Burden-sharing refers to how central banks should share the burden of providing emergency lender-of-last-resort liquidity to various parts of a global bank. Central banks like the Bank of England, for example, should **not** be responsible for the full liquidity needs of a global bank solely because the bank is headquartered in the UK. Instead, the central banks of all the countries where the global bank does business should share the lender-of-last-resort burden in some sensible, pre-agreed sort of way.

On the Volcker Rule, whatever the final implementing regulations turn out to say, if they are ever issued in our lifetime, wouldn't it be more consistent with the principle of national treatment if those regulations reflected the traditional limits on the extraterritorial reach of the Bank Holding Company Act's general activities restrictions as reflected in the International Banking Act of 1978 and Subpart B of Regulation K – that is, a foreign bank can basically do

whatever it wants outside the United States, but must comply with US restrictions in conducting activities inside the United States.

I think the swaps panel came up with a variety of highly creative ways to turn a very poorly drafted and unwise Swaps Pushout Rule into a less bad law, but at the end of the day the simplest solution to its many problems – the Occam's razor solution – may just be outright repeal.

Finally, on the enhanced capital and liquidity requirements, I think it would be more coherent and consistent with the original intellectual underpinnings of the Dodd-Frank Act to substitute appropriately calibrated capital and liquidity requirements for the Volcker Rule, the Swaps Pushout Rule and many of the other provisions of the Dodd-Frank Act. The central premise of the original outline that eventually became the Dodd-Frank Act was that all activities should be regulated in the same way based on their relative riskiness, regardless of the actor's charter. In other words, the same rules would apply to the same activities, regardless of whether the actor is a regulated bank or an unregulated member of the shadow banking system. The original idea was that this type of framework would be the best way to make sure the entire financial system was safe and to end regulatory arbitrage. That is what we would have gotten if capital and liquidity rules were used to regulate proprietary trading, private fund activities, swaps activities and all sorts of other activities. But with last-minute grafts like the Volcker Rule, the Swaps Pushout Rule and other similar provisions, that is not the regulatory architecture we ended up with.

Well, those are my initial thoughts on how the panels reflected President Dudley's call for constructive engagement, as well as my overall initial takeaways from the panels. Thanks again to all our moderators, panelists, speakers and participants for a wonderful and informative exchange of ideas. I understand that a lot of good food and drink is waiting for us on the first floor near the coat check. I suggest we not keep it waiting. Thanks.