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ALERT MEMORANDUM

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# Highlights of the Final Enhanced Prudential Standards Rule

On February 18, 2014, the Board of Governors of the Federal Reserve System (the "FRB") issued a final rule implementing some (but not all) of the enhanced prudential standards mandated by Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") for large bank holding companies ("BHCs") and foreign banking organizations ("FBOs"). Section 165 is widely considered the cornerstone of the Dodd-Frank Act's reforms to supervision and regulation of systemically significant financial institutions. The final rule reflects a number of important policy judgments by the FRB, many of them controversial, that will profoundly affect how domestic BHCs and FBOs conduct business and will shape the structure of the U.S. banking sector for years to come.

In this alert, we describe the highlights of the final rule, including significant changes from the FRB's proposal and main implications for domestic BHCs and FBOs. We will circulate a more detailed analysis of the final rule in the coming weeks.

Part I of this alert addresses some general issues of scope and application of the final rule. Part II highlights issues of interest to domestic BHCs (including BHCs owned by FBOs), and Part III focuses on considerations for FBOs.

## I. Scope and Application

- ***General Scope***. The final rule's enhanced prudential standards generally apply to BHCs and FBOs with total consolidated assets of $50 billion or more, with certain provisions applying to entities with total assets of $10 billion or more. FBOs meeting the $50 billion asset threshold that also have $50 billion or more in U.S. non-branch assets are required to form a U.S. intermediate holding company (an "IHC") that will be subject to enhanced prudential requirements similar to those applicable to a domestic BHC. This is a significant change from the FRB's proposal, which included a much lower $10 billon threshold for U.S. non-branch assets.

- ***Non-Bank SIFIs***. The final rule does not apply enhanced prudential standards to non-bank financial companies designated by the Financial Stability Oversight Council as "systemically important". Instead, the FRB intends to impose such standards through a separate rule or order that may be individually tailored to a non-bank systemically important financial institution.

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- ***SLHCs***. The final rule also does not impose new requirements on domestic savings and loan holding companies ("SLHCs"). It incorporates the company-run stress-testing requirement for SLHCs with total consolidated assets of more than $10 billion, which was adopted by the FRB and the other federal banking agencies in 2012. However, the final rule introduces a requirement for foreign SLHCs with total consolidated assets of more than $10 billion to be subject to a home-country stress-testing regime that meets certain criteria.

- ***General Timing***. The final rule is effective on June 1, 2014. With certain exceptions, domestic BHCs must comply with the new requirements by January 1, 2015. FBOs that are required to form an IHC will need to establish the IHC by July 1, 2016, one year later than the proposed rule would have required. The FRB's adoption of a later deadline is meant to provide time for FBOs to implement necessary compliance actions such as reorganizations and capitalization of the IHC. The remaining enhanced prudential standards applicable to FBOs are also generally applicable on July 1, 2016, with some exceptions noted in Part III.

- ***Future Related Rulemakings***. The final rule did not include single counterparty credit limits and early remediation requirements. The FRB indicated that it continues to consider issues related to these requirements. The FRB also noted that it intends to take into consideration the Basel Committee's large exposure limit initiative, as well as two qualitative impact studies conducted by the FRB, when finalizing the single counterparty credit limits.

  In addition, the FRB is expected to consider other related regulatory actions in the future, including:

  - Finalizing the liquidity coverage ratio ("LCR") rules proposed in October 2013;

  - Imposing a capital surcharge on U.S. institutions that are designated as global systemically important banks;

  - Establishing a long-term loss-absorbing debt requirement;

  - Finalizing an enhanced supplementary leverage ratio for the largest U.S. top-tier BHCs;

  - Introducing rules aimed at mitigating short-term wholesale funding risks; and

  - Proposing a net stable funding ratio liquidity requirement.

## II. Domestic Bank Holding Companies

For domestic BHCs, the most noteworthy aspects of the final rule relate to its liquidity planning and risk-management provisions. These are important areas of focus for BHCs and the FRB, and the final rules will require many institutions to adopt internal policy, procedure and systems enhancements. The final rule is less momentous in other areas for domestic BHCs, since the FRB had already adopted significant capital and stress-testing requirements, and since it delayed finalizing the single counterparty credit limit and early remediation requirements.

As additional enhanced prudential regulation is rolled out, domestic BHCs will want to analyze the interaction of the current rules with such future rulemakings (*e.g*., how a BHC may approach implementation of both the LCR and this rule's liquidity provisions in an efficient way). In addition, some future rulemakings may have a more direct business impact, because of additional costs and restrictions imposed by capital surcharges, short-term wholesale funding limitations, limitations on consolidated exposures and other requirements.

The delay in implementation of the single counterparty credit limit can be seen as evidence that effective comment on the proposal, including credible and empirical information about the potential effect on business and the ineffectiveness of certain calculation methodologies, may be able to move the final regulation toward a more studied solution, with reduced risk of unintended consequences.

### Liquidity Provisions

***Liquidity Buffer Intended to Complement the LCR***. The final rule affirms that the 30-day liquidity buffer consisting of highly liquid assets is intended to complement the Basel III LCR, which is the subject of a separate rulemaking by the FRB.[1] Thus, large BHCs will be required to comply with both liquidity buffer requirements. The Section 165 liquidity buffer is intended to reflect an institution's individualized circumstances, operations, risks and liquidity stress-testing scenarios, while the LCR is designed to provide a common set of minimum standards that will allow review across firms.

***Reallocation of Responsibilities for Liquidity Risk Management***. The final rule continues to focus on the procedures and governance related to a large BHC's liquidity risk-management function, with an emphasis on cash-flow projections, stress testing, contingency planning, risk limits and operational testing. In response to industry concerns that the proposal had allocated too much management responsibility to a BHC's board of directors, the final rule reallocates responsibilities between the board, risk committee and senior management (including the BHC's required chief risk officer), with most operational and management-level responsibilities left to senior management and oversight roles for the board and risk committee.

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[1] See 78 Fed. Reg. 71,818 (Nov. 29, 2013), http://www.gpo.gov/fdsys/pkg/DR-2013-11-29/pdf/2013-27082.pdf.

***Highly Liquid Assets***. In addition to cash and U.S. government, agency and GSE securities, the final rule continues to allow a BHC to demonstrate to the FRB that other assets with low credit and market risk, an active two-way market and market demand during financial distress can qualify as highly liquid assets for purposes of the liquidity buffer. The FRB expects that "high-quality liquid assets" under the proposed LCR will be considered highly liquid assets under most scenarios, subject to appropriate haircuts, but the BHC must still demonstrate that the asset meets the criteria under the final rule's liquidity buffer requirement. Thus, the calculation of highly liquid assets permitted under the final rule may diverge from how "high-quality liquid assets" are calculated for the purposes of the LCR, and will likely vary from BHC to BHC.

- Although not addressed in the preamble to the final rule, it appears that assets that do not qualify as high-quality liquid assets under the proposed LCR, such as private-label residential mortgage backed securities, could be considered highly liquid assets for purposes of the liquidity buffer if the BHC can demonstrate the instrument meets the defined characteristics of highly liquid assets.

***Collateral in Repos***. The final rule clarifies that highly liquid assets pledged to a BHC as collateral in a reverse repo transaction may be counted as part of the BHC's inflows or liquidity buffer if the BHC is permitted to rehypothecate the asset (but has not yet rehypothecated the asset), with appropriate haircuts based on the terms of the reverse repo transaction.

***Unencumbered Assets***. The final rules also clarified the treatment of certain other assets as potential highly liquid assets. As examples, assets used as a hedge position may also be counted as highly liquid assets, as well as assets pledged to a central bank or to a U.S. GSE, provided that the assets are not currently securing an extension of credit.

***Contingency Funding Plans***. The FRB clarified that BHCs may include lines of credit, including advances from the Federal Home Loan Banks, as sources of funding in their contingency funding plans, provided that the BHC takes into account the likely behavior of such funding sources in times of stress. It also confirmed that discount window credit may be incorporated into contingency funding plans, although a BHC must specify in its plan the actions it will take to replace discount window funding with more permanent sources of funds.

***Contingent Support to Certain Vehicles***. BHCs should include any sponsored vehicles and similar conduits in their liquidity stress testing as these vehicles received unanticipated support from some BHCs during the recent financial crisis. In addition, a BHC's liquidity risk limits must take into account both contractual and non-contractual off-balance sheet exposures that could create funding needs during liquidity stress events.

***Supervisory Review***. The largest BHCs will be subject to horizontal supervisory reviews of their stress-testing methods, liquidity risk management and liquidity adequacy. Supervisors are expected to review a firm's stress-testing assumptions to ensure they are of sufficient rigor.

## Capital and Stress Testing

***Requirements Previously Adopted***. The final rule incorporates the previously adopted capital planning and stress-testing requirements for BHCs with total consolidated assets of $50 billion or more. The capital planning rule was adopted in 2011, and the stress-testing rules were adopted in 2012. The 2012 stress-testing rules are also applicable to BHCs with total consolidated assets of $10 billion or more. Thus, the final rule does not impose new capital or stress-testing requirements on BHCs meeting the asset thresholds. Indeed, U.S. BHCs meeting the $50 billion threshold, including U.S. BHC subsidiaries of FBOs that are not relying on the FRB's SR Letter 01-01 (Jan. 5, 2001) ("SR Letter 01-01"), have already submitted this year's capital plans in January 2014 and are in the midst of the FRB's Comprehensive Capital Analysis and Review (CCAR).

## Risk Management

***Scope***. An enterprise-wide risk committee of the board of directors must be created by (i) a U.S. BHC with total consolidated assets of $10 billion or more, but less than $50 billion of assets, and that has a class of stock that is publicly traded and (ii) a U.S. BHC with total consolidated assets of $50 billion or more whether or not it is publicly traded. In addition, the latter must also appoint a chief risk officer.

***Redefinition of Role of Risk Committee***. In an effort to realign the responsibilities of the risk committee with those typical of a committee of a board of directors (rather than those of a management function), the final rule indicates that the risk committee, among other responsibilities, must "approve[] and periodically review[] the risk-management policies of [the BHC's] global operations and oversee[] the operation of its global risk-management framework." This represents a significant change from the proposal, which required that the risk committee "document, review and approve the enterprise-wide risk-management practices" of the company.

***Expertise***. The final rule clarifies that the requirement that the risk committee include a director with risk-management experience for BHCs with total consolidated assets between $10 billion and $50 billion can be fulfilled by a director who has experience in identifying, assessing and managing risk exposures of large complex firms, even if such risk-management experience is in a non-financial field. BHCs with $50 billion or more of assets must have a director on the committee and a chief risk officer with risk-management experience at large, complex financial firms.

## III. Foreign Banking Organizations and Intermediate Holding Companies

The provisions of the proposed rule for FBOs were controversial and generated substantial comments from many FBOs, as well as from non-U.S. regulatory authorities and trade associations. In adopting the final rule, the FRB largely rejected the policy arguments made by foreign banks, including concerns that a fragmentation of capital and liquidity by host country supervisors will impair, rather than promote, global financial stability. On the other hand, the increase in the asset threshold for the IHC requirement will substantially reduce the number of FBOs subject to that requirement, and delayed implementation deadlines for the requirements will provide greater flexibility and a better opportunity to implement any necessary restructurings. Otherwise, the bulk of the provisions were adopted in a form largely unchanged from the proposed rule.

### IHC Requirement

The final rule adopts the proposal's requirement for FBOs with significant U.S. non-branch assets to reorganize their U.S. subsidiaries under an IHC. The requirement does not apply to branch and agency offices of a foreign bank. FRB staff estimated that between 15 and 20 FBOs will be required to create IHCs under the final rule.

The IHC requirement was the single most controversial element of the FRB's proposal. The requirement departs significantly from historical FRB practice in regulating FBOs, and it could impede international initiatives to enhance cross-border coordination, particularly for a "single point of entry" resolution strategy. In any event, compliance with the IHC requirement is likely to require significant structural and systems changes for affected FBOs.

***Applicability Threshold***. Acknowledging that the U.S. operations of only a subset of FBOs could pose risks to U.S. financial stability, the FRB raised the threshold for the IHC requirement from $10 billion to $50 billion in U.S. non-branch assets. The calculation excludes branch and agency subsidiaries acquired in connection with a debt previously contracted ("DPC"), as well as Section 2(h)(2) companies. In addition, the final rule helpfully confirms that balances and transactions between U.S. top-tier subsidiaries, though not those involving U.S. branches and agencies or non-U.S. affiliates, will be subtracted when calculating U.S. non-branch assets. The IHC requirement will cease to apply to an FBO if its total U.S. consolidated assets (excluding Section 2(h)(2) companies and DPC branch and agency subsidiaries) fall below $50 billion for four consecutive quarters.

***Timing***. By July 1, 2016, an FBO subject to the IHC requirement must transfer to an IHC all of its ownership interests in subsidiary BHCs and insured depository institutions ("IDIs"), as well as 90% of the U.S. non-branch assets held by the FBO's other U.S subsidiaries. The FBO must transfer all of its ownership interests in any remaining U.S. subsidiaries (other than Section 2(h)(2) companies and DPC branch or agency subsidiaries) to the IHC by July 1, 2017. For purposes of the 90% requirement, U.S. non-branch assets are measured as of one year before

the deadline (*i.e.*, as of June 30, 2015), raising a question regarding whether or how reductions in U.S. non-branch assets between June 30, 2015 and July 1, 2016 will affect the requirement.

***Scope of IHC Requirement***. The scope of entities required to be placed in the IHC is largely unchanged. Except for Section 2(h)(2) companies and DPC branch and agency subsidiaries, all U.S. entities "controlled", as defined in the Bank Holding Company Act of 1956, as amended, by the FBO must be held by the IHC. The FRB declined to adopt other exemptions proposed by commenters (*e.g.*, fully guaranteed entities, funding conduits, investment companies, non-U.S. subsidiaries of a U.S. subsidiary, non-DPC branch or agency subsidiaries and merchant-banking portfolio companies). The FRB rejected commenters' suggestions to permit a virtual holding company in lieu of a legal entity IHC.

***Alternative Structures***. The final rule further develops the process and standards for requests for permission to establish or designate multiple IHCs, to use an alternative organizational structure or to not transfer ownership in certain subsidiaries to the IHC. An FBO must apply for such permission at least 180 days prior to the date it is required to establish or designate an IHC. If the FRB grants permission for an FBO to hold its interest in a U.S. subsidiary outside the IHC, it expects to require FBOs to enter into passivity commitments and to limit exposure and transactions between that subsidiary and the IHC. If the FRB were to permit a structure that included multiple IHCs, each one would be treated as if it meets the threshold for an IHC for the purposes of compliance with the IHC requirements, even if its individual assets are below that threshold.

***Implementation Plan***. An FBO with $50 billion or more in U.S. non-branch assets as of June 30, 2014, will be required to submit a detailed IHC implementation plan by January 1, 2015. In addition to describing how the FBO will restructure its U.S. operations (including identifying subsidiaries an FBO may request to remain outside the IHC), the plan must describe the current capital, liquidity, leverage, risk management and stress testing of its U.S. operations and how the FBO intends to bring the IHC into compliance with the enhanced prudential standards, including timelines for compliance. If the FBO intends to reduce its U.S. non-branch assets below the threshold rather than form an IHC, the plan must describe how the FBO intends to achieve this reduction. The FBO is required to notify the FRB if it will materially deviate from the plan.

## Capital and Stress Testing

***General***. An FBO with total consolidated assets of $10 billion or more will need to be subject to and comply with a capital stress-testing regime implemented by its home country supervisor. An FBO with total consolidated assets of $50 billion or more must certify to the FRB that it meets capital adequacy standards established by its home country supervisors that are consistent with the existing Basel Capital Framework. Regardless of whether it controls an IDI, an IHC generally will be subject to capital and stress-testing requirements similar to those applicable to a U.S. BHC.

***Applicability of U.S. Advanced Approaches Capital Rules***. In a significant change from the proposal, the final rule allows IHCs to calculate their risk-based and leverage capital requirements solely under the U.S. standardized approach. The relief applies even if the IHC is a BHC that meets the U.S. advanced approaches capital rules' asset threshold of $250 billion in total consolidated assets or consolidated on-balance sheet foreign exposures of at least $10 billion. IHCs meeting either of these thresholds, however, will still be subject to other capital requirements applicable to BHCs that meet these thresholds, such as the supplementary leverage ratio, the countercyclical buffer and the requirement to include accumulated other comprehensive income in common equity Tier 1 capital. Notwithstanding this exemption, IHCs meeting either of the asset thresholds of the U.S. advanced approaches capital rules may elect to be subject to those rules, although it is unclear what the benefit of doing so might be.

***Delayed Applicability of Leverage Ratio to IHCs***. Like BHCs, IHCs will be subject to a generally applicable leverage ratio of four percent. IHCs meeting the U.S. advanced approaches asset threshold will be subject to a supplementary leverage ratio of three percent. The final rule delays application of the generally applicable leverage ratio to IHCs until January 1, 2018. The January 1, 2018 date is consistent with the phase-in of the supplementary leverage ratio under U.S. capital rules.

***Delayed Applicability of Stress Testing to IHCs***. Stress-testing requirements will apply to IHCs in the same manner as they apply to U.S. top-tier BHCs, except that an IHC required to be established by July 1, 2016 would be required to begin complying for the stress-testing cycle commencing on October 1, 2017.

***Capital Plans***. IHCs established by July 1, 2016 will be required to submit their first capital plans under the capital plan rule in January 2017.

***BHC Subsidiaries of FBOs***. An existing U.S. BHC subsidiary of an FBO may be subject to certain new or existing requirements prior to the establishment of the IHC by July 2016. This clarification from the FRB is likely to increase the complexity of an FBO's strategy for restructuring and compliance with the final rule.

- A U.S. BHC subsidiary will generally be subject to the rules applicable to U.S. top-tier BHCs. A U.S. BHC subsidiary meeting the $50 billion total-asset threshold is generally subject to the enhanced prudential standards applicable to U.S. top-tier BHCs, including those that are already applicable, such as capital planning and stress testing, and those commencing on January 1, 2015 such as liquidity and risk-management requirements.

- The final rule provides additional time and flexibility to IHCs by delaying certain requirements. However, some of those delays will not be applicable to U.S. BHC subsidiaries. For example, stress-testing requirements will not apply to an IHC until the stress-testing cycle commencing on October 1, 2017, but U.S. BHC subsidiaries

meeting the relevant thresholds will be subject to the U.S. stress-testing framework until September 30, 2017. Similarly, the final rule provides that the generally applicable leverage ratio will not apply to an IHC until January 1, 2018, but U.S. BHC subsidiaries of an FBO will continue to be subject to the generally applicable leverage ratio until December 31, 2017. (Indeed, the final rule also contains an anti-evasion provision that would permit the FRB to accelerate application of the leverage ratio to an IHC in the event that a BHC subsidiary of an FBO transfers assets to its IHC in order to reduce the BHC's leverage capital requirements prior to January 1, 2018.) U.S. IDI subsidiaries of FBOs will continue to be subject to leverage-ratio and stress-testing requirements applicable to IDIs.

- Certain U.S. BHC subsidiaries of FBOs may, however, benefit from a delay arising from reliance on SR Letter 01-01. Some U.S. BHC subsidiaries are currently exempt from compliance with the capital, leverage, capital planning and stress-testing rules if they rely on SR Letter 01-01. Pursuant to the Dodd-Frank Act, however, such relief expires on July 1, 2015. U.S. BHC subsidiaries that meet the applicable thresholds would become subject to these rules upon the expiration of SR Letter 01-01 relief and before they are incorporated into the IHC structure.

- A U.S. BHC subsidiary of an FBO that would otherwise meet the thresholds for applicability of the advanced approaches capital rules may elect not to comply with such rules, provided it receives the FRB's prior approval.

***No Consideration of Parent Support***. The FRB clarified that, while IHCs are expected to "reflect" parent support, such as guarantees and keepwell agreements, in their capital plans, IHCs cannot use these agreements as sources of capital when meeting their required minimum capital ratios. Similarly, when projecting its capital adequacy over the applicable stress-testing horizon, an IHC must do so without additional consideration of possible support from its parent FBO. These requirements signal a wholesale rejection of the concept that subsidiary operations are fundamentally different from a top-tier BHC.

***Stress Testing for Branches and Agencies of FBOs***. Under the proposal, if the branches and agencies of an FBO with combined U.S. assets of $50 billion or more were serving as net sources of funding to the FBO's non-U.S. offices and affiliates in the course of a stress-test cycle, the FBO would have been required to demonstrate to the FRB that it "has adequate capital to withstand stressed conditions." Under the final rule, FBOs meeting the asset threshold are subject to "enhanced information" requirements, but the FRB will no longer require that the FBO make the adequate capital demonstration. The FRB indicated that it will likely seek additional information from FBO branch and agency networks that are operating in a net "due from" position, including information regarding results of supervisory stress tests.

***Eligible Assets for Asset Maintenance Requirement***. The final rule has eliminated from the definition of "eligible assets" amounts due from other offices and affiliates located in the United

States for purposes of the asset maintenance requirement that applies to the U.S. branches and agencies of an FBO with total U.S. assets of $50 billion or more that fail to comply with the stress-testing requirement.

**Liquidity Provisions**

***Decentralized Liquidity Management***. The FRB rejected industry arguments that FBOs should be permitted to manage liquidity on a centralized, global basis. Covered FBOs must specifically manage the liquidity risks of their combined U.S. operations through a designated U.S. risk committee and U.S. chief risk officer, and conduct liquidity stress testing at three separate levels: the FBO's combined U.S. operations, its IHC, and its U.S. branches and agencies. While the FRB did allow some recognition of liquidity support from the home office or the FBO parent for contingency funding planning purposes, the U.S. operations will need to consider limitations on the use of such funds and the possibility that such funds may not be available in a time of simultaneous stress. In the context of capital stress testing, and in meeting short-term external cash-flow needs, the U.S. operations may not consider home office or parent FBO support.

***Liquidity Buffer***. The liquidity buffer requirement remains largely unchanged from the proposal. FBOs must maintain separate liquidity buffers for their IHC and their U.S. branch and agency network, and will not be permitted to use internal cash flows (from non-U.S. offices or from U.S. or non-U.S. affiliates) to offset external cash-flow needs (*e.g.*, liquidity required to meet obligations to unaffiliated parties). IHCs will be required to hold a 30-day liquidity buffer, but the U.S. branch and agency buffer has been reduced to 14 days. (In the proposal, an FBO's U.S. branches and agencies would have been subject to a 30-day liquidity buffer requirement, but the buffer for days 15 through 30 was permitted to be held at the home office.) Assets should be held on the balance sheet of the IHC or branch or agency; however, the final rule would permit some assets to be held in offshore custodial accounts.

***Liquidity Coverage Ratio***. As with domestic BHCs, the final rule indicates that the Section 165 liquidity requirements are intended to be complementary to the Basel III LCR recently proposed in the United States, and the preamble suggests that the FRB will apply the U.S. LCR to the U.S. operations of FBOs with $50 billion or more in combined U.S. assets, or some subset thereof. However, the FRB does not indicate what thresholds it might apply to IHCs for purposes of the LCR. Under the FRB's LCR proposal, BHCs and SLHCs that meet the thresholds for application of the U.S. advanced approaches capital rules would be required to comply with the full 30-day LCR requirement, while BHCs and SLHCs with $50 billion or more in total consolidated assets that are not mandatorily subject to the U.S. advanced approaches would be subject to a modified 21-day LCR requirement.

***Effect on Dollar Clearing***. The FRB rejected arguments that inter-affiliate securities financing transactions and centralized dollar clearing activities should be exempted or treated differently under the final rule, citing the U.S. liquidity risk inherent in such activities. It acknowledged that

the liquidity requirements could therefore alter the manner in which an FBO's U.S. operations provide services to the global entity.

***Global Dollar-Denominated Transactions***. The FRB continues to consider whether to require regulatory reporting of all U.S. dollar-denominated transactions worldwide, but opted not to adopt such a requirement at this time.

**Risk Management**

***Scope***. An FBO with (i) total consolidated assets of $10 billion or more, but less than $50 billion of assets, and that has a class of stock (or similar interest) that is publicly traded or (ii) total consolidated assets of $50 billion or more (but combined U.S. assets of less than $50 billion) whether or not it is publicly traded, must create a committee (on a stand-alone basis or as part of its enterprise-wide risk committee) of its board of directors or similar governing body that oversees the risk-management policies of the combined U.S. operations of the FBO. An FBO with $50 billion or more in combined U.S. assets must create a U.S. risk committee and appoint a U.S. chief risk officer.

***Location of Risk Committee and Chief Risk Officer***. An FBO that operates U.S. branches and agencies as well an IHC may maintain its U.S. risk committee either as a committee of its global board of directors or of the IHC's board of directors. However, in a change from the proposed rule, the final rule requires all IHCs to have a risk committee of the IHC board of directors. As a practical matter, this requirement will limit the potential utility of the option of using a head office board committee. In addition, an FBO that operates only through an IHC (*i.e.*, no U.S. branch or agency) must maintain its U.S. risk committee as a committee of the U.S. IHC board of directors. A U.S. chief risk officer must be employed by and located in a U.S. branch, agency, IHC or a subsidiary, and must not also serve as the FBO's global chief risk officer or have other roles at the organization.

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If you have any questions, please feel free to contact any of your regular contacts at the firm or any of our partners and counsel listed under "Banking and Financial Institutions" under the "Practices" section of our website at http://www.clearygottlieb.com.

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