

The European Banking Federation is the voice of the European banking sector, uniting 32 national banking associations in Europe that together represent some 4,500 banks - large and small, wholesale and retail, local and international - employing about 2.5 million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that securely handle more than 300 million payment transactions per day. Launched in 1960, the EBF is committed to creating a single market for financial services in the European Union and to supporting policies that foster economic growth. Website: www.ebf-fbe.eu

15 February 2016

EBF Comments on Federal Reserve Notice of Proposed Rulemaking for TLAC and Related Requirements for U.S. G-SIBs and U.S. IHCs of Foreign G-SIBs

The European Banking Federation (EBF) strongly support the development of crisis management frameworks designed to minimize the impact of a bank's failure on the financial system and wider economy without resort to public support. For these reasons, the EBF has supported the international work led by the Financial Stability Board to set minimum standards for the Total Loss Absorbing Capacity (TLAC) for the largest, most globally significant banks. We believe implementation of the TLAC standard will advance the Federal Reserve Board's (Board) goal of ensuring sufficient resources are available in the U.S. to facilitate the resolution of covered entities and mitigate risks to U.S. financial stability arising from the failure of such entities.

In this regard EBF Members wish to express their support with regard to the conclusions of the detailed comment letter that will be submitted by the Institute of International Bankers (IIB). Nevertheless, as a representative body for the European banking sector, we wish to also highlight some specific concerns regarding the Board's Proposed Rulemaking on TLAC, particularly as they relate to requirements for covered Intermediate Holding Companies (IHC) of Foreign Banking Organisations (FBOs). In particular, we note that the proposal imposes different treatment to foreign-controlled banks and their IHCs compared to US Bank Holding Companies.

The proposal would require the IHCs of non-U.S. G-SIBs to meet their US TLAC requirement exclusively through the issuance of internal TLAC instruments. The Notice of Proposed Rulemaking seeks to justify this approach by stating that it is intended to reduce the risks of financial instability in the US and ensure that the foreign parent continues to own the US IHC post-resolution, avoiding the complexities of a change of control for the subsidiary post-resolution. We believe that the proposed steps are unnecessary to achieve the goals mentioned:

- Threat to US Financial Stability: The non-branch operations of significantly important FBOs in the US are required to be structured with an IHC. The IHC has the effect of protecting the operating entity, such as a bank, and the day-to-day financial system from the effects of any resolution. As would be the case for a US BHC, losses would be up-streamed from the bank to the shareholders in the IHC to absorb losses without the continuity of

operations in the underlying operating entities, such as banks or broker-dealers being affected. This is a chain of ownership and structural subordination which has been promoted by the FSB and the US authorities themselves.

- Risk of Change of Control: The Fed also indicates that a change in the control of the US entity “could create additional and undesirable regulatory and management complexity during a failure scenario”. We believe that the US Authorities face change of control risks in any scenario since a resolution at the Holding Company level could also lead to a change in the control of the Group and, therefore, indirectly of the US entity. Even if the IHC was fully funded via internal instruments a resolution undertaken at the level of the parent would be anticipated to change control of the parent (from the existing equity holders to the holders of TLAC instruments) and hence the control of the US IHC would also be changed.

Given that the NPR permits US GSIBs to issue external TLAC, we believe that IHCs, which pose lower systemic risk in comparison, should also have this possibility open to them. This is particularly relevant for non-US GSIB’s that have a MPE resolution strategy.

We also have concerns regarding the proposed design and implementation of contractual terms in internal TLAC instruments which permit the US authorities to trigger their write-down without agreement from the home authorities of non-US GSIB’s. Cooperation on this topic is essential to ensure that the interests of the institution and its home and host authorities are balanced. We note that the FSB is undertaking work to develop guidelines to underpin the design of joint triggers for internal LAC instruments and encourage the US to participate in this to ensure a consistent and predictable regime.

In order to preserve a level playing field between institutions operating in the US market, the applicable internal LTD requirements should be calibrated based on the same methodology that the Board used to calibrate the corresponding requirements applicable to covered BHCs. Hence, we believe that a final TLAC rule should incorporate equal treatment of covered IHCs – which are aligned with EPS and are pre-positioned to facilitate an orderly resolution – to their US peers.

These issues have significant implications for how EU banking groups present in the US are structured and operate, and for how supervisory and economic risks and responsibilities are distributed among jurisdictions.

