IFLR
INTERNATIONAL FINANCIAL LAW REVIEW

INTERNATIONAL BRIEFINGS 2014

US
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Banking balkanisation?

In mid-February 2014, the Federal Reserve approved the final enhanced prudential rule for foreign banking organisations (FBOs) under Section 165 of the Dodd-Frank Act. The final rule applies enhanced standards to FBOs that have a US banking presence, with the most onerous standards being applied to FBOs that have combined US assets of $50 billion or more, or US non-branch assets of $50 billion or more. Admittedly, the rule does not require subsidiarisation of the US operations of foreign banks, and it eliminates the requirement that FBOs with US assets outside the branch and agency network of less than $50 billion establish an intermediate holding company (IHC) for its US subsidiaries. This IHC requirement would apply only to the largest FBOs. The IHC would be subject to regulatory requirements applicable to comparably sized US institutions, such as risk-based capital standards and leverage requirements and other prudential standards on a consolidated basis, including stress testing. Branches and agencies would operate outside the IHC requirement, be subject to liquidity requirements, and may be required to hold liquidity buffers outside the US. In addition, certain institutions would be required to implement certain risk management policies and procedures, including, for example, forming a risk committee to oversee risk management for its combined US operations and employing a US chief risk officer to aggregate and monitor risks of the combined US operations. Other prudential standards will be addressed separately, such as the large exposure framework for banks and remediation frameworks.

Although the final rule addressed a number of the concerns that were raised regarding the December 2012 proposal, it still raises quite a number of issues for complex banking entities with international operations, including significant US businesses. The final rule was adopted shortly after the Volcker Rule had been finalised. It is too early to predict how the activities of foreign banks may be affected by the cumulative impact of the Volcker Rule and this rule. But many foreign banks will certainly consider carefully each of their businesses, the regulatory capital costs associated with these, whether it is possible or desirable to restructure certain businesses so that activities are conducted solely outside of the United States, and the incremental regulatory and compliance costs and risk exposure associated with retaining these businesses in the United States. Regulators outside of the United States can be expected to adopt, and in certain cases already have indicated that they are considering adopting, similar measures in order to address the risks posed in their jurisdictions by the activities of banking entities organised outside of their jurisdiction. One can't help but wonder whether this will lead to the balkanisation or localisation of banking activities.

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