



CONFERENCE OF STATE BANK SUPERVISORS

December 1, 2014

Secretariat to the Financial Stability Board
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Re: Cross-border recognition of resolution action

The Conference of State Bank Supervisors (CSBS) appreciates the opportunity to comment on the Financial Stability Board's (FSB) consultative document, entitled *Cross-border recognition of resolution action*. State regulators support the FSB's efforts to remove legal obstacles across jurisdictions that might thwart the orderly, cross-border resolution of a global systemically important bank (G-SIB).

CSBS is the nationwide organization of banking regulators from all 50 U.S. states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. For more than a century, CSBS has given state supervisors a national forum to coordinate bank supervision and to develop regulatory policy.¹

This letter briefly explains the structure of the U.S. banking and regulatory system, the role of state regulators within that system, and how the U.S. operations of foreign banking organizations are regulated within the U.S. dual banking system. The letter then provides the FSB with state regulators' comments and recommendations on eliminating jurisdictional and legal barriers that might thwart the effective cross-border resolution of a G-SIB.

BACKGROUND ON THE U.S. REGULATORY SYSTEM

The following section seeks to provide the FSB important context on the structure of the U.S. regulatory system, which dictates and informs how the United States regulates the U.S. operations of foreign banking organizations (FBOs).

STATE BANK REGULATORS WITHIN THE U.S. REGULATORY SYSTEM

The authority to charter institutions is the foundational regulatory authority in the United States. Chartering in the United States occurs within a unique dual banking system that dates back to 1863. In the dual banking system, the Office of the Comptroller of the Currency charters

¹ Conference of State Bank Supervisors. Available at: <http://www.csbs.org/Pages/default.aspx>

and supervises federally chartered banks and thrifts, while states charter and supervise state banks and thrifts. Banks in the United States choose their charter – national or state – thereby choosing their subsequent regulatory oversight. More than 76 percent of the approximately 6,650 U.S. banks hold a state charter. State regulators charter and supervise a wide variety of financial institutions, from small community banks to G-SIBs. Indeed, two of the eight U.S. institutions identified by the FSB as G-SIBs – Bank of New York Mellon and State Street – are chartered by the states of New York and Massachusetts, respectively.²

The dual banking system is the foundation of the U.S. regulatory framework and supervisory approach, and it explicitly recognizes the powers afforded to state and federal governments. Again, chartering authority (and its associated supervisory activities) is a power afforded to the states under the U.S. banking and regulatory system, and it is not secondary to that of the federal government. The creation of depository insurance and the Federal Reserve System in the early 20th century and other statutory changes during the 20th century added a component of federal regulation to state-chartered banks. The Federal Deposit Insurance Corporation (FDIC) supervises state banks that forego Federal Reserve System membership, while the Federal Reserve supervises state-chartered banks that choose to be members of the Federal Reserve System.

FOREIGN BANKING ORGANIZATIONS WITHIN THE U.S. REGULATORY SYSTEM

FBOs seeking to operate in the United States are also subject to the dual banking system's regulatory and supervisory structure. Like domestic U.S. banks, FBOs in the United States choose to license their operations with either a state or national charter. The vast majority of FBOs opt to charter their U.S. operations through the states, with over 78 percent of FBO commercial banks, branches, agencies, and/or representative offices licensed by the states.³ Additionally, the Federal Reserve acts as a consolidated supervisor of FBOs in the United States, and other federal regulators may have oversight of the FBO depending on how it chooses to structure its U.S. banking operations.

The states have a long history of licensing and supervising FBOs, and in many cases the states' authority to oversee the U.S. operations of FBOs predates the powers granted to the federal agencies to do the same. Additionally, Congress has contemplated potential changes to the U.S. regulatory structure on numerous occasions, and time and time again it has preserved and reinforced the states' role in FBO licensing and supervision.

² "2014 Update of List of Global Systemically Important Banks (G-SIBs)." Financial Stability Board, November 2014. Available at: http://www.financialstabilityboard.org/wp-content/uploads/r_141106b.pdf

³ "Structure Data for U.S. Banking Offices of Foreign Entities." Federal Reserve Board, June 2014. Available at: <http://www.federalreserve.gov/releases/iba/201406/default.htm>

The states have also spearheaded effective and efficient supervisory frameworks for state-chartered FBOs. In 1998, state and federal regulators signed two cooperative agreements that streamlined supervision for FBOs operating in multiple states. The first, the Nationwide FBO Supervision and Examination Coordination Agreement, created a structure for a lead state to coordinate the examination and supervision of an FBO licensed in multiple states.⁴ This provides FBOs operating across state lines with a single regulatory point of contact, while allowing state regulators to share supervisory information with each other. Under the arrangement, the lead state plans and schedules the examination, and then develops a single report of examination for all of the FBO's U.S. activities. Second, the Nationwide State/Federal FBO Supervision and Examination Coordination Agreement created a similar arrangement between the states, the Federal Reserve, and the FDIC.⁵ It designated a "Responsible Federal Reserve Bank" and/or FDIC Regional Office to coordinate activities within its own agency and with the coordinating state regulator.

STATE BANK REGULATORS AND CROSS-BORDER RESOLUTION ACTIONS

As FBO licensors and regulators, the states have statutory authority and existing processes that govern resolution actions regarding FBOs operating within their jurisdictions. In the context of resolving a G-SIB, resolution plans required under the Dodd-Frank Wall Street Reform and Consumer Protection Act show that state regulators often exercise material supervisory authority over many G-SIBs' material subsidiaries. In fact, state bank regulators license and supervise material operations providing critical functions to 19 of the 22 non-U.S. G-SIBs identified by the FSB.⁶ These state-chartered material operations include a number of office types, from large insured depository institutions to branch offices facilitating and managing the banking group's U.S. dollar funding positions. Therefore, state bank regulators have a keen and vested interest in facilitating the rapid, smooth, and orderly resolution of a G-SIB operating within their jurisdictions.

To overcome any potential jurisdictional or legal impediments to the effective cross-border resolution of a G-SIB, state regulators propose that the FSB consider the following actions:

- *Encourage more robust pre-resolution coordination between a G-SIB's home country regulator and all of the banking company's material supervisory authorities. Cross-*

⁴ "Nationwide Foreign Banking Organization Supervision and Examination Coordination Agreement." CSBS, 1998. Available at: http://www.csbs.org/regulatory/Cooperative-Agreements/Documents/state_fbo_agrmnt.pdf

⁵ "Nationwide State/Federal Foreign Banking Organization Supervision and Examination Coordination Agreement." CSBS, 1998. Available at: http://www.csbs.org/regulatory/Cooperative-Agreements/Documents/state_federal_fbo_agrmnt.pdf

⁶ Barclays, BNP Paribas, Deutsche Bank, Credit Suisse, Mitsubishi UFJ FG, Royal Bank of Scotland, Agricultural Bank of China, BBVA, Groupe BPCE, Group Crédit Agricole, Industrial and Commercial Bank of China Limited, Mizuho FG, Nordea, Santander, Société Générale, Standard Chartered, Sumitomo Mitsui FG, UBS, and Unicredit Group.

border regulatory coordination already occurs within crisis management groups (CMGs), supervisory colleges, and other international fora. This coordination must be meaningful, with home country regulators fully engaging all of the banking company's material regulators in the resolution planning process, including information sharing, resolution simulations, and additional pre-resolution coordination efforts. Failing to fully engage material regulators, including state banking agencies, prior to a cross-border resolution will only foster uncertainty in G-SIB resolution regimes and complicate coordination efforts when speed and efficiency are of the utmost importance.

- *Identify specific impediments to a G-SIB's cross-border resolution on a jurisdictional basis, and engage with individual jurisdictions to work out meaningful solutions.* State regulators recognize the focus of the FSB's consultative document is the capacity of national resolution regimes, and both their statutory and administrative components, to carry out an effective cross-border resolution. However, this focus does not adequately take into account the U.S. regulatory structure, and its federal and state components. State regulators firmly believe that the statutes governing their resolution regimes allow them to either recognize or offer supportive measures to a G-SIB's home country regulator executing a cross-border resolution. That said, robust pre-resolution coordination with state regulators who oversee a G-SIB's material operations will help identify any unforeseen jurisdictional impediments at the state level. Additionally, any potential impediments discovered in the pre-resolution coordination process should be directly addressed by the home country regulator and the states.

CONCLUSION

State regulators appreciate the FSB's efforts to eliminate legal and jurisdictional issues that might thwart the effective cross-border resolution of a G-SIB. Advanced coordination with all material regulators during the resolution planning process, including state regulators, will ensure all potential jurisdictional impediments are identified and addressed well in advance of executing cross-border resolution actions.

Thank you for considering our views. If you have any further questions, please contact Margaret Liu (+1 202.728.5749 or mliu@csbs.org) or Nathan Ross (+1 202.728.5753 or nross@csbs.org) on my staff. We look forward to further engagement with the FSB on this important topic.

Sincerely,



John W. Ryan
President & CEO