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US CONGRESS PASSES DODD-FRANK REFORM LEGISLATION WITH A "CLARIFICATION" (AND LITTLE ELSE) FOR FOREIGN BANKS

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "**Dodd-Frank Reform Bill**") was signed into law, following a 258-159 vote in the US House of Representatives, which adopted without any changes the version of the legislation passed by the Senate earlier this year.

The Dodd-Frank Reform Bill raises the statutory threshold for the application of most enhanced prudential standards from $50 billion to $250 billion in total consolidated assets. The statutory EPS threshold, enacted as part of the 2010 Dodd-Frank Act, generally applies to US bank holding companies, whereas the EPS thresholds for foreign banking organizations are set forth in the Federal Reserve Board's implementing regulations and are largely based on an FBO's combined US assets rather than its worldwide total consolidated assets. An amendment of the statutory EPS threshold, therefore, arguably has no direct impact on the EPS thresholds for FBOs unless the amending legislation specifically directs the Federal Reserve Board to amend its Dodd-Frank implementing regulations.

Apparently endorsing this view, Section 401(g) of the Dodd-Frank Reform Bill is captioned "Clarification for Foreign Banks" and provides that nothing in the amendment of the statutory EPS threshold shall be construed—

- to "affect the legal effect of the final rule of the Board of Governors of the Federal Reserve System entitled 'Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations' … as applied to foreign banking organizations with total consolidated assets equal to or greater than $100,000,000,000;" or
- to "limit the authority of the Board of Governors of the Federal Reserve System to require the establishment of an intermediate holding company under, implement enhanced prudential standards with respect to, or tailor the regulation of a foreign banking organization with total consolidated assets equal to or greater than $100,000,000,000."

In other words, the ***only*** FBOs that would meaningfully benefit from the Dodd-Frank Reform Bill are those with worldwide total consolidated assets of more than

"Absent remedial action by the Federal Reserve Board, any FBO with worldwide total consolidated assets of $100 billion or more (no matter the amount of the FBO's combined US assets) would be treated less favorably than US bank holding companies with up to $250 billion of total consolidated assets."

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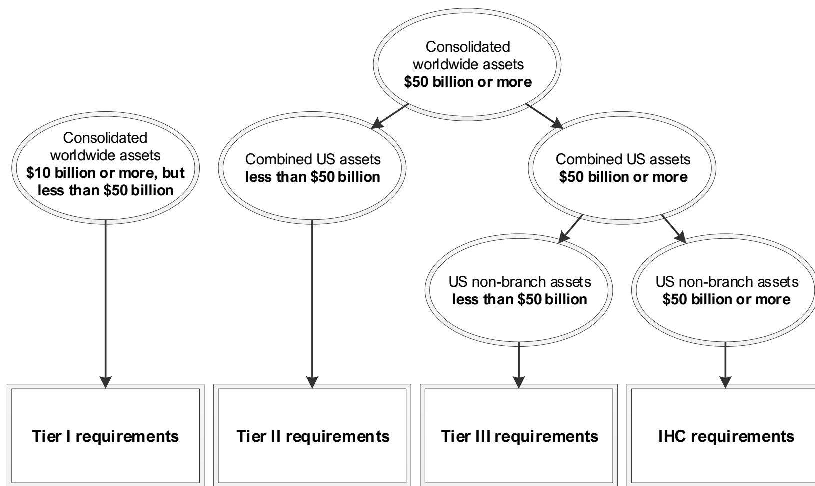
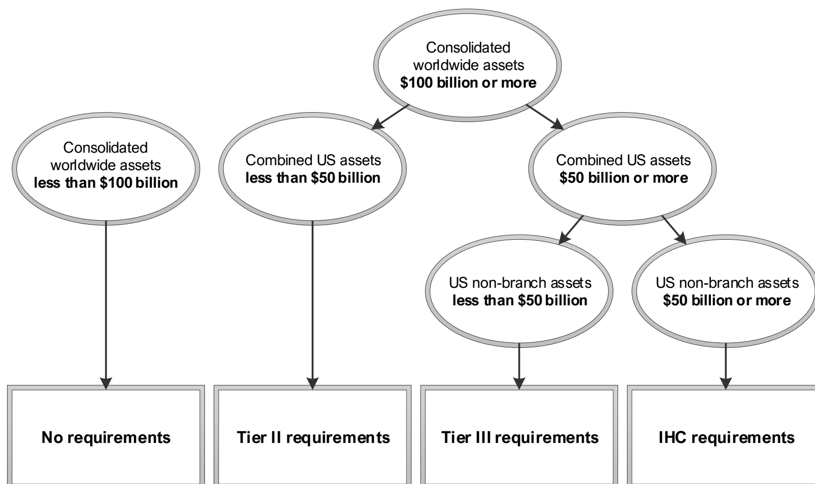
$50 billion—the threshold for most of the FBO requirements currently contained in the Federal Reserve Board's implementing regulations—and less than $100 billion. Absent remedial action by the Federal Reserve Board, any FBO with worldwide total consolidated assets of $100 billion or more (no matter the amount of the FBO's combined US assets) would be treated less favorably than US bank holding companies with up to $250 billion of total consolidated assets.

The following diagrams illustrate how the Dodd-Frank Reform Bill would affect the EPS thresholds for FBOs, and are followed by a high-level summary of the currently applicable requirements.

Current Thresholds



Amended Thresholds



Tier I requirements

- Annual capital stress tests conducted or reviewed by the FBO's home country supervisor
- US risk committee and risk management policies, if the FBO is publicly traded

Tier II requirements

Tier I requirements, plus—

- US risk committee and risk management policies, even if the FBO is not publicly traded
- Home country capital adequacy standards consistent with the Basel framework
- Annual internal liquidity stress tests for the FBO's consolidated operations or combined US operations
- Maximum debt-to-equity ratio following a "grave threat" determination under Section 165(j) of the Dodd-Frank Act

Tier III requirements

Tier II requirements, plus—

- More stringent requirements around the FBO's US risk committee and risk management policies
- US chief risk officer with specified responsibilities
- Liquidity risk management for the FBO's combined US operations, including (i) cash flow projections, (ii) contingency funding plan, (iii) liquidity risk limits, and (iv) collateral, legal entity, and intraday liquidity risk monitoring
- Monthly liquidity stress tests for combined US operations and for the FBO's US branch and agency network
- 14-day liquidity buffer for the FBO's US branch and agency network
- More stringent requirements around annual supervisory capital stress tests

IHC requirements

Tier III requirements, plus—

- Intermediate holding company for the FBO's entire interest in all US subsidiaries
- IHC capital requirements:
  - Capital adequacy standards the same as for a US bank holding company (but advanced approaches not required)
  - Regulation Y capital planning requirements
  - Supervisory and "company-run" capital stress tests the same as for a US bank holding company
- IHC liquidity requirements
  - Liquidity risk management requirements
  - Monthly liquidity stress tests
  - 30-day liquidity buffer (separate from the liquidity buffer for the FBO's US branch and agency network)

We will continue to monitor developments with respect to the Dodd-Frank Reform Bill and the Federal Reserve Board's approach to the current implementing regulations. For answers to your questions and further assistance, please contact a member of Clifford Chance's US Financial Services Regulatory Group listed below.

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