

AMCHAM GERMANY FINANCIAL SERVICES COMMITTEE

Positions for Reshaping the Global Financial System

September 2010

AmCham Germany supports the following key regulatory principles:

- Banks play a central role in our economy, they must focus on their core businesses and serve their clients with good, innovative financial products.
- Banks should employ capital with responsibility and long term view.
- Markets need to be transparent.
- Derivative markets and their infrastructure need to be strengthened and become transparent.
- We should end, once and for all, the phenomenon of “too big to fail.”
- We should have a strong systemic regulator, and effective supervision.
- It is essential to have a level playing field with consistent regulation and standards across the global financial industry.
- We need a merit-based compensation system driven by long-term performance, consistent with the safety and soundness of the financial system.

AmCham Germany's positions on broad themes in the global regulatory reform debate for each area are discussed below:

- I. **The new structure and rules of the global regulatory framework**
- II. **Capital and liquidity requirements**
- III. **New rules governing certain business activities**
- IV. **Changes in tax and compensation schemes**

I. THE NEW STRUCTURE AND RULES OF THE GLOBAL REGULATORY FRAMEWORK

A. **Global Banks are critical to the effective functioning of the global economy (addressing “too big to fail” in a globally coordinated way)**

- Large, systemically significant institutions play a vital role in international trade and the global economy; they should be regulated appropriately and should have sufficient levels of capital and liquidity.
- **Jurisdictional Form:** Capital and liquidity requirements should take into account the interconnectivity and globalization of an institution's activities. Stress tests should help assess capital and liquidity needs, as well as help identify any potential legal vehicle issues. Businesses are global in nature

and need to operate within a global structure, with consistent prudential regulation and oversight. Subsidiarization would in the short term strengthen local entities, but will weaken it in the long term due to inefficient capital allocation and diminish the ability of the parent to provide support in case of a crisis.

- **Leverage ratio:** While we acknowledge that leverage ratios may play an important supplementary role to capital and liquidity requirements, it will be important to ensure that differing accounting standards are taken into consideration in their implementation.

B. Authority for systemic risk regulators and greater cross border coordination among them is needed to strengthen prudential supervision and address issue the of “too big to fail”

- All systemically important financial institutions should be subject to strong prudential oversight. We believe in formalized coordination and cooperation with respect to global regulation; there are multiple ways to achieve this.
- **Resolution authority:** AmCham Germany believes that tools necessary to deal with a systemic threat should include the broadest powers to deal with a variety of different potential situations, and should ensure risk aligned and adequate treatment to all stakeholders. Once in place, authorities should develop procedures to facilitate mutual recognition of crisis management and resolution measures.
- **Living Wills – Recovery and Resolution Plans (RRPs):** While we recognize that living wills are likely to be a central element in dealing with “too big to fail” institutions, it is important to note both their limitations and that they can only be part of the solution. A key limitation is that they are of necessity based on historical experience and cannot be expected to envision all future possibilities. Therefore they cannot be a substitute for robust stress testing to ensure appropriate capital and liquidity. They must also be supplemented by central clearing and exchange and exchange trading of derivatives, as outlined below.
- **Resolution Funds:** AmCham Germany believes that taxpayers should never bear the cost of a systemic bank bailout. However, we have not yet seen a resolution fund structure that solves the issue of moral hazard and believe more work must be done to design an appropriate structure.

II. CAPITAL AND LIQUIDITY REQUIREMENTS

A. Robust capital and liquidity requirements are essential

- AmCham Germany shares the Basel committee objective of strengthening the quality and quantity of capital and liquidity in the financial sector by improving risk capture, controlling excessive leverage, minimizing the procyclicality of capital requirements, and ensuring more effective oversight of systemic risk in the financial sector globally.

- Substantive capital and liquidity reform cannot be considered and implemented in isolation from other critical initiatives. The cumulative effect of these actions, especially when taken in combination with other accounting, regulatory and legislative initiatives currently under discussion globally, may have unintended consequences that are inconsistent with shared goals to ensure health and stability in the financial sector and promote sustainable economic growth.
- AmCham Germany supports the development of a comprehensive quantitative international liquidity standard. In determining a liquidity standard, AmCham Germany supports heavy reliance on a Pillar 2 supervisory review and policy approach in order to achieve comprehensive and meaningful liquidity risk management.
- Additionally, AmCham Germany encourages the establishment of a liquidity standard that would be applied internationally and supersede local requirements. A harmonized approach to liquidity risk standards would make it easier for global financial institutions, to manage risk effectively and efficiently and would reduce systemic risk overall by avoiding trapped pools of liquidity that would not be available to the broader group in times of need.
- Finally, AmCham Germany believes a countercyclical capital buffer would have the effect of making the banking sector more resilient to stress and reduce the inherent pro-cyclicality of the financial system.

III. NEW RULES GOVERNING CERTAIN BUSINESS ACTIVITIES

A. Transparency of markets, particularly for OTC Derivatives, is at the core of any effective regulatory system

- AmCham Germany believes systemic safety would be enhanced by increased transparency in the OTC derivatives market. Thus, AmCham Germany supports a comprehensive framework of oversight, protections, and disclosure for the OTC derivative markets whereby all eligible OTC contracts are (a) cleared through appropriately regulated, capitalized, and governed central counter-parties (“CCP”) with transparency on flows; and, where applicable, (b) traded on regulated exchanges and electronic trade execution systems.

B. Consistent approach for Hedge Fund Regulation

- AmCham Germany believes that regulation should be based not on the name or type of institution, but rather, should be based on the nature of the activity; without this, activities will simply shift to the shadow banking system.
- AmCham Germany supports a globally coordinated approach to hedge fund regulation, consistent with the FSB’s mandate, being non-discriminatory and applicable to all market participants.

- AmCham Germany supports the G-20 mandate that the FSB develop mechanisms for cooperation and information sharing between the relevant authorities to ensure effective oversight is maintained where a fund is located in a different jurisdiction from the manager.

B. A single global accounting standard

- As called for by the G-20, AmCham Germany urges accounting standard setters to redouble their efforts to converge on a single set of high-quality global accounting standards that improves transparency, benefits investors, and levels the playing field globally between issuers and users of financial statements.

II. CHANGES IN TAX AND COMPENSATION SCHEMES

A. Consistent transatlantic approach in taxation

- AmCham Germany believes any bank taxes should follow a consistent approach between the US and the EU, since global taxation standards are unlikely, and should avoid double taxation and the potential for tax and regulatory arbitrage.
- Alternatively, a focus on ex-post resolution may be achieved by bank levy and a resolution fund, primarily funded by the financial industry. The levy should be reasonable in size, and risk based, recognizing the risk profile of an institution.

B. Compensation

- AmCham Germany believes we need a merit-based compensation system driven by long-term performance, being consistent with the safety and soundness of the financial system.

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