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Highlights of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA): What Foreign Banks Should Know

Foreign financial institutions represent a gigantic force in the American banking industry today. As of June 30, 1988, there were 675 U.S. offices of foreign banks in the United States holding in the aggregate more than $330 billion of deposits, or more than 16 percent of total U.S. banks' deposits, and about $640 billion in assets, or nearly 22 percent of total U.S. banks' assets.[1] All statistics obtained from American Banker Top Numbers Update (1989). Foreign presence in the American financial community is expected to grow. Although the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA)[2] generally does not directly affect foreign financial institutions' operations in the United States, the consequences of this massive restructuring law on U.S. banking institutions[3] will inevitably affect foreign institutions. Understanding what the competition faces and a concept of where the United States Government, particularly the banking institutions' regulators, believes the financial industry should move, is essential for foreign banking institutions.

This article highlights those key provisions of FIRREA with which foreign institutions should be familiar, especially with respect to the consolidation of U.S. financial institutions, limitations on banking institutions' operations, the special powers of the banking regulators, and enforcement actions involving banking institutions and their representatives (including foreign banks).

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1. All statistics obtained from American Banker Top Numbers Update (1989).
2. P.L. No. 101-73, 103 Stat. 1983 (1989) [hereinafter FIRREA]. FIRREA was roughly 1,000 pages as passed by Congress and signed into law by President Bush on August 9, 1989.
3. The term "banking institutions" is used generically to refer to all commercial banks and savings associations.

I. Banking Deposits

The Federal Deposit Insurance Corporation (FDIC) has replaced the defunct Federal Savings and Loan Insurance Corporation (FSLIC) as the insurer of savings associations and continues as the insurer of bank deposits.[4] There are two separate insurance funds: the Bank Insurance Fund (BIF), which is essentially a continuation of the FDIC's existing fund, the Permanent Insurance Fund,[5] and the Savings Association Insurance Fund (SAIF), which replaces the FSLIC insurance fund.[6] Assessment rates are established by the FDIC annually for each fund independently of one another. Until 1998, SAIF premiums will be significantly higher than BIF premiums.[7] Banking institutions that do not meet the minimum capital standards—"troubled institutions"—are prohibited from accepting, renewing, or rolling over brokered deposits.[8] Troubled institutions also may not offer interest rates "significantly higher" than prevailing rates being offered by similar institutions in their market area.[9] That provision is aimed at the operations of an institution's money desk.[10]

II. Consolidation of the Industry

A. Conversions

Although no banking institution may participate in a "conversion transaction"—basically an acquisition or merger transaction that results in deposits moving from SAIF to BIF, or vice versa—without the FDIC's prior approval prior to August 1994,[11] savings associations may switch their charters to bank charters (upon application to and subject to the approval of the appropriate federal banking agency) at any time so long as the resulting bank remains a member of SAIF (and pays the higher SAIF assessment rates) for the remainder of the moratorium period.[12] The moratorium also does not apply to a bank holding company that merges or transfers the assets and liabilities of any savings association it controls with or to its bank subsidiary, subject to the approval of the appropriate federal banking agency and the Federal Reserve Board.[13] A portion of the bank's resulting deposits, however, will be assessed at the SAIF premium rates and that amount of income deposited with the

4. FIRREA §§ 205 and 206(a), Federal Deposit Insurance Act [hereinafter FDIA] §§ 4 and 5, 12 U.S.C. §§ 1814 and 1815.
5. FIRREA § 211(3), FDIA § 11(a)(5), 12 U.S.C. § 1821(a)(5).
6. FIRREA § 211(3), FDIA § 11(a)(6), 12 U.S.C. § 1821(a)(6).
7. FIRREA § 208, FDIA § 7(b)(1)(A) and (C), 12 U.S.C. § 1817(b)(1)(A) and (C).
8. FIRREA § 224(a) and (b), FDIA § 29(a).
9. FIRREA § 224(a), FDIA § 29(f)(3).
10. H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 508 (1989).
11. FIRREA § 206(a)(7), FDIA § 5(d)(2)(A), 12 U.S.C. § 1815(d)(2)(A).
12. FIRREA § 206(a)(7), FDIA § 5(d)(2)(G), 12 U.S.C. § 1815(d)(2)(G).
13. FIRREA § 206(a)(7), FDIA § 5(d)(3)(A), 12 U.S.C. § 1815(d)(3)(A).

SAIF.[14] Every banking institution participating in a conversion transaction (including branch sales and purchases) must pay both exit and entrance fees to the appropriate insurance fund in amounts determined by the FDIC.[15]

B. Bank Holding Company (BHC) Acquisitions of Healthy Thrifts

The Federal Reserve Board has adopted a new policy[16] permitting BHCs to acquire any savings association, healthy or sick, as long as the acquired thrift institution engages only in deposit activities and lending and other activities permissible for BHCs.[17] Further, the only restrictions on transactions permitted by FIRREA to be imposed by the Federal Reserve Board between a savings association and its BHC affiliates are the affiliate transaction rules applicable to all BHCs.[18] Tandem operations restrictions previously imposed have been lifted.[19]

C. Passive Investments by Nonbank Banks

FIRREA has clarified and expanded a provision of existing law[20] exempting certain companies controlling nonbank banks from treatment as BHCs even when such companies obtain control of more than 5 percent of the shares or assets of an additional banking institution.[21]

III. Dealing with Failed or Failing Institutions

A. Resolution Trust Corporation

FIRREA established a corporate instrumentality of the United States known as the Resolution Trust Corporation (RTC),[22] with its primary mission to manage and resolve all savings associations for which a conservator or receiver had been appointed between January 1, 1989, and August 9, 1989, or is appointed during the thirty-six month period from August 9, 1989, to August 9, 1992, and to dispose of all of the assets of such institutions.[23] The FDIC acts as RTC's "exclusive manager" to conduct all of the RTC's activities.[24] Overall RTC/ FDIC strategy and general policy guidelines are established by an Oversight

14. FIRREA § 206(a)(77), FDIA § 5(d)(3)(B), 12 U.S.C. § 1815(d)(3)(B).
15. FIRREA § 206(a)(7), FDIA § 5(d)(2)(E), 12 U.S.C. § 1815(d)(2)(E). The FDIC has adopted a BIF entrance fee equal to 80¢ per $1,000 of deposits. 54 Fed. Reg. 40,377 (1989).
16. 54 Fed. Reg. 37,297 (1989) (to be codified at 12 C.F.R. § 225.25(b)(9)).
17. Bank Holding Company Act [hereinafter BHCA] § 4(c), 12 U.S.C. § 1841(c).
18. FIRREA § 601(a), BHCA § 4(i)(2), 12 U.S.C. § 1843(i)(2).
19. *FRB Removes Tandem Operations Restrictions for BHC-Acquired Thrifts*, Fed. Banking L. Rep. (CCH) ¶ 87,770 (Aug. 21, 1989).
20. BHCA § 4(f), 12 U.S.C. § 3204(9).
21. FIRREA § 603(a), BHCA § 4(f)(2)(ii), 12 U.S.C. § 1843(f)(2)(A)(ii).
22. FIRREA § 501(a), Federal Home Loan Bank Act [hereinafter FHLBA] § 21A(b)(1).
23. FIRREA § 501(a); FHLBA § 21A(b)(3).
24. FIRREA § 501(a), FHLBA § 21A(b)(1)(C).

Board consisting of the Secretary of the Treasury, the Chairman of the Federal Reserve Board, the Secretary of the Department of Housing and Urban Development, and two persons from the private sector appointed by the President with the advice and consent of the Senate.[25]

Among its special powers to resolve failed institutions within its jurisdiction, the RTC/FDIC may: require a merger or consolidation of institutions;[26] organize new federal savings associations;[27] organize bridge banks with respect to failed institutions that become banks;[28] and own voting and nonvoting equity securities and warrants or other participation interests in the institutions or their assets.[29] The FDIC anticipates hiring in excess of 5,000 employees to administer the management and resolution of the failed thrifts and the disposal of their assets.

B. FDIC's Powers as Receiver or Conservator

FIRREA made a comprehensive amendment to section 11 of the Federal Deposit Insurance Act to define the FDIC's authorities and duties as conservator or receiver.[30] The authorities given the FDIC essentially parallel those previously given the FDIC and FSLIC and are intended to permit the FDIC to take whatever actions may be necessary to resolve the problems created by defaulted banking institutions.[31] In its capacity as either conservator or receiver, the FDIC succeeds to all rights, titles, powers, and privileges with respect to the institution and its assets; may operate the institution and conduct all of its business; may collect obligations, preserve and conserve the assets and property of the institution; must pay all valid obligations in accordance with the limitations of FIRREA; may take any action it deems in the best interest of the institution, the depositors, or the FDIC; may merge banking institutions or transfer any of their assets or liabilities without any approval, assignment, or consent; and may repudiate burdensome contracts or leases.[32]

C. Power to Repudiate Contracts and Leases

FIRREA codifies, expands, and clarifies what has been described as a federal common law right of an FDIC receiver or conservator to repudiate burdensome contracts and leases.[33] As receiver or conservator the FDIC may within a "reasonable period" following its appointment disaffirm or repudiate any contract or

25. FIRREA § 501(a), FHLBA § 21A(a).
26. FIRREA § 501(a), FHLBA § 21A(b)(11)(A)(iii).
27. FIRREA § 501(a), FHLBA § 21A(b)(11)(A)(iv).
28. FIRREA § 501(a), FHLBA § 21A(b)(11)(A)(v).
29. FIRREA § 501(a), FHLBA § 21A(b)(10)(H).
30. FIRREA § 212(a), FDIA §§ 11(c)-(1), 12 U.S.C. §§ 1821(c)-(1).
31. H.R. Rep. No. 54, 101st Cong., 1st Sess., pt. 1, 330-31 (1989).
32. FIRREA § 212(a), FDIA § 11(d)(2), 12 U.S.C. § 1821(d)(2).
33. H.R. Rep. No. 54, *supra* note 31, at 331.

lease to which the institution was a party, the performance of which the FDIC in its discretion determines to be burdensome and the disaffirmance or repudiation of which would promote the orderly administration of the institution's affairs.[34] Except for certain financial contracts,[35] the recovery against a receiver or conservator for repudiation or disaffirmance of a contract is expressly limited to actual direct compensatory damages measured as of the date of the appointment of the conservator or receiver. Liability of the receiver or conservator for any other damages, including punitive or exemplary damages, damages for lost profits or opportunity, or damages for pain and suffering, is expressly encluded.[36]

D. D'Oench Doctrine

Section 1823(e) of the Federal Deposit Insurance Act contains statutory codification of the common law doctrine known as the D'Oench Doctrine, so named after the Supreme Court's decision in *D'Oench Duhme & Co. v. FDIC*[37] (although the statute did not preempt the Court's holding). The doctrine estops a debtor from asserting defenses based on side or secret agreements tending to mislead a federal insurance agency as to the terms of an asset it acquires, such as a promissory note, upon the failure of a financial institution. Prior to FIRREA, section 1823(e) was applicable to the FDIC in its corporate capacity only, although the courts had extended the D'Oench Doctrine's application to the FDIC in its receivership capacity as well as to the FSLIC in its corporate and receivership capacities.[38] FIRREA codified these extensions by clarifying that the D'Oench Doctrine is applicable to the FDIC in both of its capacities—corporate and receiver—and whether the FDIC is acting in connection with a bank or savings association.[39] The doctrine also now shields the assets acquired by bridge banks organized by the FDIC to resolve banks in default,[40] and FIRREA has extended the D'Oench Doctrine to cover liabilities.[41]

E. Claims Procedures Against Receivers

FIRREA made significant changes to the procedures to be followed by the FDIC in processing and making determinations of claims brought against the FDIC in its capacity as receiver of banking institutions. The changes are

34. FIRREA § 212(a), FDIA § 11(e)(1)-(2), 12 U.S.C. § 1821(e)(1)(2).
35. FIRREA § 212(a), FDIA § 11(e)(3)(C) and (e)(8), 12 U.S.C. § 1821(e)(3)(C) and (e)(8).
36. FIRREA § 212(a), FDIA § 11(e)(3)(A)-(B), 12 U.S.C. § 1821(e)(3)(A)-(B).
37. 315 U.S. 447 (1942).
38. *See, e.g.*, Andrew D. Taylor Trust v. Security Fed. Sav. & Loan Ass'n, 844 F.2d 337 (6th Cir. 1988); Federal Deposit Ins. Corp. v. Investors Assocs. X., Ltd., 775 F.2d 152 (6th Cir. 1985); Federal Deposit Ins. Corp. v. First Nat'l Fin. Corp., 587 F.2d 1009 (9th Cir. 1978); Federal Sav. & Loan Ins. Corp. v. LeFeve, 676 F. Supp. 764 (S.D. Miss. 1987).
39. FIRREA § 217(4), FDIA § 13(e), 12 U.S.C. § 1823(e).
40. FIRREA § 214, FDIA § 11(n)(4)(I), 12 U.S.C. § 1821(n)(4)(I).
41. FIRREA § 212(a), FDIA § 11(d)(9), 12 U.S.C. § 1821(d)(9).

constructed to respond to the constitutional and statutory concerns raised by the United States Supreme Court in *Coit Independence Joint Venture v. FSLIC*.[42] It is congressional intent that the claims determination procedure meet the concerns raised by the Court in the *Coit* case while enabling the FDIC to dispose of the bulk of claims expeditiously and fairly.[43] Claimants must exhaust the FDIC administrative procedures to determine claims, although the FDIC must make a determination within a specified time period, and then may either bring the claim de novo in United States district court or elect a de novo hearing under the terms of the Administrative Procedure Act.[44] There will be no judicial review of the FDIC's determination not to allow a claim.[45] A claimant's only remedy will be to file suit (or continue a previously filed suit) on the merits of the claim or elect an administrative hearing on the merits of the claim. If a claimant elects an administrative adjudication of its claim, judicial review of the outcome will be pursuant to the Administrative Procedure Act, rather than de novo.[46]

F. FDIC Assistance to Depository Institutions

The Act amends section 13 of the Federal Deposit Insurance Act[47] governing the FDIC's powers to assist insured banks. Overall the FDIC's powers and authorities to assist institutions by purchasing assets, making loans or deposits, assuming liabilities, or making contributions (open bank assistance) are extended to cover all banking institutions to prevent their closing or restore them to normal operations.

G. Branching Provisions

If a bank or bank holding company acquires a savings association as part of an emergency acquisition transaction, the savings association may retain and operate its existing branches and other existing facilities. If the thrift continues to exist as a separate entity it may open and operate new branches to the same extent as any other savings association whose home office is located in the same state as that of the thrift and which is not affiliated with a bank holding company.[48] A savings association loses those branching rights and is limited to the branching rights a bank has in the state where the thrift is located if (i) the bank holding company does not own a bank in the state where the thrift's home

42. 109 S. Ct. 1361 (1989).
43. H.R. Rep. No. 54, *supra* note 31, at 418–19.
44. FIRREA § 212(a), FDIA § 11(d)(6), 12 U.S.C. § 1821(d)(6).
45. FIRREA § 212(a), FDIA § 11(d)(5)(E), 12 U.S.C. § 1821(d)(5)(E).
46. FIRREA § 212(a), FDIA § 11(d)(6)(7), 12 U.S.C. § 1821(d)(6)(7).
47. FIRREA § 217(3)(E), FDIA § 13, 12 U.S.C. § 1823.
48. FIRREA § 217(8), FDIA § 13(k)(4)(A), 12 U.S.C. § 1823(k)(4)(A).

office is located and (ii) the thrift fails to meet the domestic building and loan association asset tests of the Internal Revenue Code.[49]

H. Liability of Commonly Controlled Banking Institutions

Banking institutions will be liable for losses incurred by the FDIC, and which the FDIC reasonably anticipates incurring, after August 9, 1989, in connection with the default of a "commonly controlled" banking institution or assistance provided to a commonly controlled banking institution in danger of default.[50] The FDIC may waive the application of the cross-guaranty if it determines that such an exemption is in the best interest of the BIF or the SAIF.[51] Excluded from the definition of commonly controlled institutions are those the control of which is obtained by virtue of the acquisition of voting shares acquired in securing or collecting a debt previously contracted in good faith. This exclusion is available for a period of five years following the date of acquisition or such longer period approved by the FDIC.[52] An institution must pay the amount of its liability for losses upon receipt of written notice from the FDIC of the loss. Such written notice of liability must be given within two years from the date the FDIC incurs the loss or the banking institution will not be liable.[53] There is a broad restraint on the right of private parties from limiting or impairing the ability of a banking institution to meet its cross-guaranty obligations.[54]

IV. Limitations on Loans, Investments and Activities of Banking Institutions

A. Thrift Activities

Congress considered the loan and investment powers of thrift savings associations, especially the powers of state chartered thrifts, to be a prime cause of the savings and loan industry disaster.[55] Therefore, one of the purposes of FIRREA is to curtail investments and other activities of thrifts that pose unacceptable risks to the insurance funds.[56] FIRREA accomplishes this purpose in the following manner: (1) there is a substantial decrease in the lending limits of thrifts (formerly equal to 100 percent of capital) to the level of national banks

49. FIRREA § 271(8), FDIA § 13(k)(4)(B), 12 U.S.C. § 1823(k)(4)(B).
50. FIRREA § 206(a), FDIA § 5(e)(1)(A), 12 U.S.C. § 1815(e)(1)(A). Institutions are commonly controlled if they are controlled by the same banking institution holding company or one banking institution is controlled by another. FIRREA § 206(a), FDIA § 5(e)(9), 12 U.S.C. § 1815(e)(9).
51. FIRREA § 206(a), FDIA § 5(e)(5), 12 U.S.C. § 1815(e)(5).
52. FIRREA § 206(a), FDIA § 5(e)(7), 12 U.S.C. § 1815(e)(7).
53. FIRREA § 206(a), FDIA § 5(e)(1)(B), 12 U.S.C. § 1815(e)(1)(B).
54. FIRREA § 206(a), FDIA § 5(e)(4), 12 U.S.C. § 1815(e)(4).
55. *See, e.g.*, S. Rep. No. 19, 101st Cong., 1st Sess. 8-9 (1989).
56. FIRREA § 101.

(15 percent of capital);[57] (2) there is a nearly equal substantial decrease in the amount of nonresidential real estate secured loans that a savings association may make (reduced to four times capital);[58] (3) the FDIC may outlaw any specific activity it deems a serious threat to the SAIF;[59] (4) there are special loan and investment limits on state chartered thrifts to restrict them to the activities of a federally chartered thrift;[60] (5) investments in "junk bonds" are prohibited and investments in commercial paper and corporate debt securities are curtailed;[61] and (6) subsidiaries engaged in activities not permitted for national banks must be separately capitalized.[62]

B. Loan to Value Ratios

Specific loan to value ratios are not part of FIRREA, but the Congress has directed the federal banking agencies to consider the following standards for all banking institutions:[63] 95 percent of appraised value for a loan to finance the purchase of or refinance property improved by a completed one- to four-family dwelling; 80 percent of the appraised value for a loan secured by property improved by any other kind of completed structure; 70 percent of the appraised value for a loan secured by improved property lacking any completed structure; and 65 percent of the appraised value for a loan secured by raw land (other than a loan to an active farming operation secured by agricultural land).

C. Real Estate Appraisals

FIRREA promotes the adoption by all of the federal regulatory agencies of nearly uniform appraisal standards and effectively forces each of the states to establish certification and licensing programs to ensure that all appraisers meet minimum qualifications. By July 1, 1991, all appraisals performed in connection with "federally related real estate transactions" (which is virtually every real estate related transaction any banking regulatory agency engages in, contracts for, or regulates, and which requires the services of an appraiser) must be performed only by persons certified or licensed in accordance with FIRREA mandated requirements.[64]

D. Limitation on Certain Contracts

No insured banking institution may enter into oral or written contracts with any person to provide goods, products or services if the performance of such

57. FIRREA § 301, Home Owner's Loan Act [hereinafter HOLA] § 5(u).
58. FIRREA § 301, HOLA § 5(c)(2)(B)(i).
59. FIRREA § 2221(4), FDIA § 18(m), 12 U.S.C. § 1828(m).
60. FIRREA § 222, FDIA § 28(a).
61. FIRREA § 222, FDIA § 28(d); FIRREA § 301 HOLA § 5(c)(2)(D).
62. FIRREA § 301, HOLA § 5(t)(5).
63. H.R. Conf. Rep. No. 222, *supra* note 10, at 402.
64. FIRREA § 1101.

contracts would adversely affect the safety or soundness of the institution involved. The FDIC will promulgate regulations to carry out this prohibition.[65]

E. Qualified Thrift Lender Test

In 1987, Congress designed the "qualified thrift lender" test (QTL)[66] to encourage savings institutions to commit themselves to the role of providing housing-related finance and punish those institutions that do not. Reflecting congressional intent to force savings institutions to offer housing- and consumer-related credit, QTL status is now conditioned upon an association maintaining 70 percent (up from 60 percent) of its assets in a much narrower list of "qualified thrift investments."[67]

The new QTL statute supersedes the existing statute as of July 1, 1991. A thrift failing to maintain QTL status will have to convert to a bank charter, but will have to pay the higher SAIF assessment fees through 1993 and pay exit and entrance fees to the insurance funds.[68]

F. Cross-Marketing Practices Permitted

As amended by FIRREA, the savings and loan holding company statutory provisions do not contain cross-marketing prohibitions on diversified holding companies. Formerly,[69] savings association subsidiaries of diversified holding companies could not offer or market products or services of an affiliate unless the products or services were ones lawfully offered by bank holding companies. Similarly, the products or services of the thrift could not be offered or marketed by or through an affiliate unless the affiliate was engaged only in activities permitted for bank holding companies whose thrifts are QTL institutions. This change is especially important to nonfinancial institution holding companies. For example, now an automobile manufacturer may market consumer financing of its cars through its thrift subsidiary or affiliate. This change, coupled with the continued ability of unitary savings and loan holding companies and their subsidiaries to engage in activities virtually without restriction[70] (unlike bank holding companies[71]), appears to make it more attractive than before for nonfinancial institution companies to acquire savings and loan associations.

65. The Attorney General and the Comptroller General are directed to conduct a study to determine the extent to which institutions are entering into contracts with vendors under agreements by which the vendors purchase stock or assets from the institution or invest in the institution's capital. The purpose of the study is to determine whether such practices are having an anticompetitive effect and should be prohibited. FIRREA § 225, FDIA § 30(e), 12 U.S.C. § 1811(30)(e).

66. National Housing Act [hereinafter NHA] § 408(o), 12 U.S.C. § 1730a(o).

67. FIRREA § 303(a), HOLA § 10(m).

68. FIRREA § 303(a), HOLA § 10(m)(3)(A) and (E).

69. NHA § 408(p)(2), 12 U.S.C. 1730a(p)(2).

70. FIRREA § 301, HOLA § 10(c)(3).

71. BHCA § 4(c), 12 U.S.C. § 1841(c).

V. Capital Standards

A. Thrift Standards

Perhaps the most important and controversial provisions of FIRREA are those that establish new capital standards for savings associations.[72] Thrift capital standards are modeled upon those imposed on national banks and are intended to be on a parity with national bank standards by January 1, 1995. All savings associations are required to maintain a minimum leverage limit or ratio of core capital to assets of not less than 3 percent, and minimum tangible capital—core capital minus intangible assets—of *not less than* 1.5 percent of total assets.[73] Thrifts are also required to meet a risk-based capital requirement, which is a ratio of the total of an institution's capital to specified weighted values of the individual components of that institution's assets and off-balance sheet items. The risk-based component will reach 8 percent of risk-weighted assets by January 1, 1993.[74]

VI. Enforcement Provisions

Virtually all of the enforcement provisions of section 8 of the Federal Deposit Insurance Act have been made applicable to all branches or agencies of foreign banks or commercial lending companies owned or controlled by foreign banks.[75] This is especially significant because FIRREA has dramatically raised the level of the federal banking regulators' civil enforcement powers by expanding their ability to issue cease-and-desist orders and impose civil money penalties (of as much as $1 million per day).[76] The criminal bank fraud statute penalties have also been greatly increased.[77]

72. FIRREA § 301, HOLA § 5(s) and (t).
73. 54 Fed. Reg. 46,845 (1989).
74. 54 Fed. Reg. 46,845 (1989).
75. FIRREA § 204(c), FDIA § 3(c)(3), 12 U.S.C. § 1813(c)(3).
76. *See, e.g.*, FIRREA § 902(a), FDIA § 8(b), 12 U.S.C. § 1818(b) and FIRREA § 907(a), FDIA § 8(i)(2), 12 U.S.C. § 1818(i)(2).
77. *See, e.g.*, FIRREA § 961.