



Federal Financial Analytics, Inc.

FOREIGN-TAKEOVER RULES HIT U.S. BANK LOANS, REPORT FINDS

“The tough new approach to defining control is a trade-off between enhanced national security – critical of course – and U.S. access to international capital. The rules will not only reduce funding available to recapitalize troubled U.S. banks, but also threaten day-to-day bank loans involving foreign firms for U.S. companies.”

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WASHINGTON, D.C. – Federal Financial Analytics, Inc. (FedFin) today released a report on the Treasury’s proposed rules to dictate which U.S. transactions involving foreign firms require prior review by the Committee on Financial Investment in the U.S. (CFIUS). The report follows testimony earlier this year by FedFin managing partner Karen Shaw Petrou before a Congressional commission looking at the impact of sovereign wealth funds on U.S. financial-services firms. Petrou recommended that CFIUS use a standard to determine real control, not just a numerical threshold to define “passive” investments, and the CFIUS proposal would adopt this approach. “This means that, going forward, CFIUS will look beyond appearance to reality and ensure that foreign investments in U.S. banks only convey potential control if appropriate safeguards are in place,” Petrou said.

However, as the FedFin report notes, the proposal goes farther in several respects with potential impact outside the financial-services sector. Most notably, the proposal would define any bank loan that could, upon default, convey control – the usual requirement in secured loans – as a transaction requiring prior review. Loan syndications with similar provisions would also need advance scrutiny, as would long-term leases and numerous other transactions long viewed as outside the CFIUS process.

Combined with the extensive new disclosures that must go with a CFIUS notice, binding certification requirements and stiff civil money penalties, the proposal will require a significant change in how any foreign financial institution – especially any affiliated with a home government – does business in the U.S. Many may limit their activities going forward, perhaps reducing U.S. access to global capital markets, the FedFin study finds.

The report is attached.

Federal Financial Analytics, Inc. has for the past twenty years counseled large financial institutions and even their regulators on major legislative, regulatory and policy issues that pose strategic risk. It does not lobby on behalf of clients, but advises them on appropriate responses in light of identified challenges, working on an array of GSE, Basel II, and acquisition-value issues. The firm publishes numerous information and analytical services, including Financial Services Management and GSE Activity Report.

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