

investigations, (d) intervene in cases of inadequate capital or liquidity endangered deposits, or bankruptcy by temporarily prohibiting certain banking transactions. The BAFin ensures that Deutsche Bank has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration, and financial resources. The BAFin reviews compliance with these operational and internal control standards through an annual audit performed by the year-end auditor and through special audits ordered by the BAFin. The supervisory authorities require information on the condition of Deutsche Bank and its branches through periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The supervisory authorities also require information from Deutsche Bank regarding capital adequacy, country risk exposure, and exposures. German banking law mandates penalties to ensure correct reporting to the supervisory authorities, and auditors face penalties for gross violations of their duties.

Additionally, the BAFin, in cooperation with the Bundesbank supervises all branches of Deutsche Bank, wherever located, subjecting them to announced and unannounced on-site audits, and all other supervisory controls applicable to German banks.¹¹ With respect to branches located in the member states, such audits are carried out consistent with the applicable European Directives, and with respect to branches outside the EEA, consistent with applicable international agreements, memoranda of understanding, or other arrangements with the relevant foreign supervisory authorities.¹²

¹¹ Deutsche Bank's branches domiciled outside the European Economic Area (EEA) are also subject to local regulation and supervision by the host country's supervisory authority, e.g., the Ministry of Finance in Japan, the Swiss Federal Banking Commission in Switzerland, the Australian Prudential Regulation Authority in Australia, and the Office of the Superintendent of Financial Institutions in Canada. For Deutsche Bank's branches domiciled in EEA member states, the BAFin is the lead supervisory authority pursuant to the rules on the "European passport", and only some aspects are subject to complementary supervision by the host country's supervisory authority (e.g., the Securities and Futures Authority in the United Kingdom supervises the conduct of the investment business of Deutsche Bank in the United Kingdom).

¹² As a result of meetings between the U.S. and German regulators in October 1993, the U.S. Department of Treasury has accorded national treatment to German bank branches, and the German Ministry of Finance has granted relief to

Deutsche Bank's subsidiaries that pursue banking and other financial activities (other than insurance) or activities that are closely related thereto are consolidated with Deutsche Bank and form a banking group for purposes of the capital ratios and the large exposure limits that the bank is required to meet also on a group-wide basis. In conformity with European Directives,¹³ the BAFin supervises such banking groups (where their parent institution is domiciled in Germany) on a consolidated basis.

While oversight is less individualized for subsidiaries than for branches, the supervision extends to adequacy of equity capital of banking and financial holding groups and compliance with the regulations regarding large loans granted by such groups. Thus, Deutsche Bank is subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor.¹⁴

There are two deposit insurance programs that cover Deutsche Bank and its foreign branches. The first is a European Union required mandatory deposit insurance system established in 1998 that insures deposits denominated in the currency of an EEA member state up to the lesser of 90% of the deposit amount or 20,000 euros. This statutory deposit protection scheme is maintained, as far as private commercial banks like Deutsche Bank are concerned, by a separate institution (Entschädigungseinrichtung deutscher Banken mbH) that is subject to supervision by the BAFin. In addition, since 1976, the Association of German Banks (Bundesverband deutscher Banken e.V.) has maintained a voluntary deposit protection program called the Deposit Protection Fund (Einlagensicherungsfonds) that safeguards liabilities in excess of the thresholds guaranteed by the European Union program, up to a protection ceiling for each creditor of 30% of the liable capital of the bank.¹⁵

branches of U.S. banks in Germany, in particular with respect to "dotation" or endowment capital requirements and capital adequacy standards. Since the German Banking Act (s. 53c) allows such exemptions only insofar as branches of German companies are afforded equal exemptions in the foreign state, this confirms indirectly the recognition of the German banking supervisory standards by the U.S. regulators.

¹³ See, e.g., Council Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis, Council Directive 92/121/EEC of 21 December 1992 on the monitoring and control of large exposures of credit.

¹⁴ This is also the conclusion reached by the Board of Governors of the Federal Reserve System in its Order approving Deutsche Bank's application to become a bank holding company, effective May 20, 1999.

¹⁵ Liable Capital means the sum of core capital and supplementary capital as defined in section 10,

The Deposit Protection Fund was created to give assistance, in the interest of depositors, in the event of imminent or actual financial difficulties of banks, particularly when the suspension of payments is threatened, and to prevent the impairment of public confidence in private banks. The Deposit Protection Fund is funded by regular contributions paid by every German bank that has elected to participate in the Deposit Protection Fund. Participating banks may be required to make special contributions to the extent requested by the Deposit Protection Fund to enable it to fulfill its purpose.

The Deposit Protection Fund relies on the Auditing Association of German Banks (Prüfungsverband deutscher Banken e.V. or Auditing Association) to audit banks and make recommendations to the banks. Following those recommendations is a requirement for all banks covered by the Deposit Protection Fund. Banks are no longer permitted to be part of the Deposit Protection Fund if, inter alia, they give incomplete or incorrect information to the Federal Association of German Banks in connection with the Fund; if they are in default with the payment of contributions for more than two months after a written reminder; if they do not support the Auditing Association in its auditing activity or do not promptly fulfill any condition set by the Auditing Association; if they fail to make correct disclosure to depositors; or if they make incorrect statements or incorrectly advertise the deposit insurance program. Thus, the German deposit protection system protects deposits throughout the world wherever a branch of a participating German bank is located.

4. The proposed exemption is similar to PTE 96-23.¹⁶ Generally, PTE 96-23 conditionally permits: (1) Plans whose assets are managed by an in-house asset manager (INHAM) to enter into transactions with parties in interest where the INHAM directs the transaction; (2) the leasing of office or commercial space owned by a plan managed by an INHAM to an employer whose employees are covered under the plan (or the employer's affiliate), where the plan acquires the office or commercial space subject to an existing

subsection (2) of the German Banking Act. However, for measurement of the protection ceiling, the supplementary capital, as defined in section 10, subsection (2b) of the German Banking Act, shall only be taken into account up to an amount of 25% of the core capital, as defined in section 10, subsection (2a) of the German Banking Act. Financial data on the date of the last published annual financial statements of the bank shall be determinative.

¹⁶ 61 FR 15,975 (Apr. 10, 1996).