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SEC staff provides no-action relief for UK bank bail-in, Chairman anticipates broader rulemaking

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SEC staff granted no-action relief regarding the exchange of bailed-in bonds of a failed UK bank for ordinary shares of the resolved firm under the Bank of England's statutory bail-in powers. Chairman Paul S. Atkins has instructed SEC staff to prepare a rulemaking for an exemption from registration requirements in connection with regulatory bail-ins more broadly, which would help provide regulatory clarity and certainty in future fast-moving foreign bank resolutions.

The staff (the Staff) of the Securities and Exchange Commission (SEC) recently issued a no-action letter (the Letter) to the Bank of England stating that the Staff would not recommend enforcement action if a UK banking organization subject to resolution under the Bank of England's statutory bail-in powers[1] exchanges its bailed-in debt securities for ordinary shares without registering the exchange under the Securities Act of 1933 (Securities Act). This no-action relief would avoid requiring a UK banking organization that has U.S. shareholders to go through a full SEC registration process in the midst of a banking failure.

The Letter partially addresses the issues identified in the Financial Stability Board's report on the 2023 bank failures, which noted that, according to the Staff, there could be legal challenges relating to U.S. securities laws in executing a foreign bank bail-in, particularly with respect to compliance with Securities Act registration requirements.[2] According to the Staff's position, a bail-in would involve an "offer" and "sale" of securities for purposes of the Securities Act, which would require that such offer and sale of securities be registered with the SEC or qualify for an exemption from the registration requirements of Section 5 of the Securities Act. A requirement that a foreign bank go through a full SEC registration process in the midst of a banking failure would be impracticable. Contrast this with U.S. bank holding companies that fail under the U.S. Bankruptcy Code, which benefit from an exemption from the U.S. securities laws that is not available to foreign banking organizations.[3] The Staff position thus creates misalignment between U.S. bank holding companies and their foreign counterparts.

Assuming the Staff's position is correct, market practitioners had understood that the exemption provided by Section 3(a)(9) of the Securities Act,[4] which exempts from registration "any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly by or indirectly for soliciting such exchange" would be available in most bail-in situations. The Letter provides some clarity by confirming that the Staff would not object to the position that a UK-style bail-in would qualify for the exemption in Section 3(a)(9) of the Securities Act.[5] Notably, a UK-style bail-in includes an interim step where holders of the bailed-in debt receive interim certificates before receiving equity securities. The Letter confirms that the Staff does not believe that interim step precludes reliance on Section 3(a)(9). The Letter, however, does suggest that the Staff's position is dependent on the fact that the interim certificates are not transferable, so the relief may not apply to a number of other countries with large banking organizations with bail-in procedures that create interim certificates that are transferable and tradable.

As a practical matter, generally only the largest foreign banks, mostly globally systemically important banks (G-SIBs), have U.S. shareholders and they are the only ones affected by the Staff's view that a bail-in would involve an offer and sale of securities. However, these are the same institutions that are most likely to impact financial stability where speed and certainty in a resolution are key.

In recognition of the fact that the Letter only provides relief for certain foreign bank bail-ins, simultaneously with the issuance of the Letter, Chairman Atkins issued a statement that he has directed the Staff to prepare a rulemaking regarding a potential exemption from the Securities Act's registration requirements for securities offered and sold in connection with a foreign bank regulatory bail-in. This solution had previously been foreshadowed in a speech by Travis Hill, then Acting Chairman of the Federal Deposit Insurance Corporation.[6] We assume that the rulemaking will also exempt other foreign jurisdictions where the temporary certificates created as part of the bail-in procedure are transferable and tradable.

The overhang caused by delays due to the risk of an SEC registration has caused concern among foreign banking authorities, especially after the events of 2023, that the U.S. securities laws might adversely impact the cooperative international resolution planning that has occurred for G-SIBs since the financial crisis. Together with the Letter, Chairman Atkins' accompanying statement shows that the SEC is serious in its intent to address concerns regarding the applicability of the Securities Act's registration requirements in connection with all types of foreign bank regulatory bail-ins. It is clear that the SEC understands the need for cooperation with foreign banking regulators and banking organizations to ensure that U.S. securities laws do not impede the application of foreign bail-in powers, particularly in the fast-moving context of the failure of a G-SIB, where satisfying any Securities Act registration requirements in a timely fashion would be difficult and could preclude the use of an otherwise viable resolution mechanism.

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[1] A bail-in of a foreign bank refers to the partial or full write-down of its debt and/or its conversion to equity by operation of law that is intended to recapitalize the distressed foreign bank.

[2] Financial Stability Board, *2023 Bank Failures: Preliminary Lessons Learnt for Resolution* 17 (Oct. 10, 2023), https://www.fsb.org/2023/10/2023-bank-failures-preliminary-lessons-learnt-for-resolution/.

[3] The Letter would not be relevant in a resolution of a U.S. bank holding company under Chapter 11 of the Bankruptcy Code under a single point of entry (**SPOE**) resolution strategy, since any exchange of bailed-in liabilities for securities in that context would take place under the supervision of the Bankruptcy Court and would thus qualify for the exemption from registration provided in Section 3(a)(7) of the Securities Act for "certificates issued by a receiver or by a trustee or debtor in possession in a case under title 11, with the approval of the court." A U.S. bank holding company's SPOE resolution strategy would be effectuated by placing such company in bankruptcy while its operating subsidiaries are recapitalized and kept out of bankruptcy or other resolution proceedings.

[4] 15 U.S.C. §77c(a)(9).

[5] In discussing how the Staff reached their no-action position, the Letter provides an overview of how the Bank of England would effectuate a bail-in, highlighting that only existing holders of bailed-in debt would receive interim certificates, which would not be tradable or transferable. Immediately after issuance of the Letter, the Bank of England released updated guidance on how it might implement the UK's resolution regime in the event of a bank failure. In its press release announcing the guidance, the Bank of England highlighted the Letter and related statement from Chairman Paul S. Atkins, noting that the Letter "provides additional assurance regarding the cross-border operability of bail-in." The press release concluded by thanking the SEC and Chairman Atkins for "their collaboration and support for ongoing international efforts to strengthen resolution preparedness."

[6] Travis Hill, Acting Chairman, Federal Deposit Insurance Corporation, *Resolution Readiness and Lessons Learned from Recent Large Bank Failures* (Oct. 15, 2025), https://www.fdic.gov/news/speeches/2025/resolution-readiness-and-lessons-learned-recent-large-bank-failures.