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March 15, 2016

The Honorable Daniel K. Tarullo
Member
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Deutsche Bank's Las Vegas casino ownership stake, German American Capital Corporation, and its U.S. resolution plan

Dear Governor Tarullo,

We write to alert you to important information that is missing from the public section of Deutsche Bank's resolution plan for its U.S. operations, which we will refer to as its "public living will". The document, "Deutsche Bank U.S. Resolution Plan July 2015 Submission: *Section 1: Public Section*", was last filed with the Federal Reserve on July 1, 2015.¹ We believe it falls short of the regulatory intent of the final rule under Section 165(d) of Dodd-Frank Act (the "165(d) Rule"), and we urge you to take the necessary steps to ensure Deutsche Bank file an updated version as soon as possible. Specifically, we are concerned about two issues related to its public living will:

1. **The bank owns a valuable ownership stake in Station Casinos, which is subject to unique regulations in the gaming industry.** Certain regulatory approvals would be needed for the transfer of this stake in a potential Chapter 11 filing by either German American Capital Corporation, which directly holds the asset, or other reorganization or liquidation scenarios involving the bank's U.S. operations.
2. **The bank should provide more details regarding German American Capital Corporation (GACC), a significant subsidiary of the bank.** The lack of mention of Station Casinos in the bank's public living will makes us question whether Deutsche Bank has prepared a resolution strategy for GACC, one of the largest lenders in the U.S. commercial real estate market and an entity which the bank itself calls a "significant subsidiary" in its 20-F filings. In our view, GACC is a materially significant U.S. affiliate of Deutsche Bank engaged in critical operations within one of the bank's core activity groups. As one of the largest commercial loan originators in the United States, and given that it engages in large scale loan warehousing and collateralized lending, GACC faces significant liquidity and counterparty risk. Yet Deutsche Bank's public living will fails to provide any detail about GACC, leaving the public wondering whether it is in fact prepared to handle adverse contingencies, including the possible need to dispose of its valuable casino holdings.

1. Deutsche Bank's Station Casinos Stake is Valuable and It Cannot Be Transferred without Approval by State and Tribal Gaming Regulators

GACC owns 25% of Station Holdco LLC, which holds the economic interest in Station Casinos LLC, a major Las Vegas-based gaming company which operates 19 casinos in Nevada, plus a Native American casino in California and another Native American casino in Michigan.²

Last May, when it was reported that Station Casinos might launch an IPO, the company was reportedly valued at "more than \$3.5 billion, including \$2.15 billion in debt."³ This would imply an equity value of \$1.35 billion, and Deutsche Bank's 25% share of it would have been worth \$337.5 million. That valuation may well have risen, given the company's upbeat financial announcements over the last two quarters. This means Deutsche Bank's Las Vegas casino stake is likely worth north of \$340 million, which is a meaningful amount given recent market concerns about Deutsche Bank.

Earlier this month, investors were concerned about Deutsche Bank's ability to make payments on its contingent convertible bonds (CoCos).⁴ It turns out, as the bank said in a statement on February 8, Deutsche had "sufficient payment capacity" to pay its CoCo coupons of approximately EUR 350 million (about US\$395 million) on April 30 as well as through 2017.⁵

Deutsche Bank also continues to shed non-core assets in order to boost its capital position. It has been reported that Deutsche Bank's sale of its stake in Huaxia Bank of China for up to \$4 billion would add 30 to 40 basis points to the bank's common equity Tier 1 ratio.⁶ That suggests selling the bank's \$340-plus-million casino stake in Las Vegas could potentially add 3 basis points or more to its common equity Tier 1 ratio. Surprisingly, it appears Deutsche Bank is not planning to sell off its casino stake now or through the proposed IPO by Red Rock Resorts, a Station Casinos affiliate (see below).⁷ Each of JPMorgan Chase and GACC became owner of 25% of economic interest in Station Casinos as a result of the gaming company's Chapter 11 restructuring in June, 2011. JP Morgan Chase, however, sold its ownership interest in April, 2012,⁸ less than a year after the restructuring was completed.

Given the value of its casino asset and its potential utility in any resolution scenario, it is particularly important for Deutsche Bank to make known in its public living will that its Station Casinos stake cannot be easily transferred to creditors if it were to become part of a Chapter 11 proceeding of either GACC or Deutsche Bank's overall U.S. operations.

It is well known that Nevada has a highly developed regulatory system that is considered the "gold standard" in the gaming industry. Individuals and companies cannot own and transfer interests in licensed casinos and casino companies in Nevada without going through a rigorous suitability review and licensing process. According to a 2011 article, "Gaming Restructuring in Nevada", by Jennifer L. Carleton and Andrew D. Moore, both from Brownstein Farber Hyatt Schreck LLP, a top gaming law firm:

The gaming industry is heavily regulated and strictly controlled in order to prevent unsavory or unsuitable persons from being directly or indirectly involved with gaming, to establish and maintain responsible accounting practices and procedures, to maintain effective controls over the financial practices of licensees, to prevent cheating and fraudulent practices, and to provide a source of state and local revenue through taxation and licensing fees.⁹

And the authors conclude:

Although a gaming creditor may hold an interest in a gaming company, the creditor cannot transfer its interests, sell the gaming operation, or reorganize without first complying with state gaming laws and regulations.

These regulatory requirements are routinely disclosed by gaming companies. For example, there are extensive descriptions of gaming regulations in the prospectus of Red Rock Resorts, Inc., a Station Casinos affiliate which will acquire a minority economic interest in and control of the gaming operator through an IPO.¹⁰ From its S-1/A filed on February 12 this year:

Concerning "Nevada Gaming Regulations"

- “Any beneficial owner of our equity securities, regardless of the number of shares owned, may be required to file an application, may be investigated, and may be required to obtain a finding of suitability as a beneficial owner of our securities if the Nevada Commission has reason to believe that such ownership would otherwise be inconsistent with the declared policies of the State of Nevada. If the beneficial owner of our equity securities who must be found suitable is a corporation, partnership, limited partnership, limited liability company or trust, it must submit detailed business and financial information, including a list of its beneficial owners, to the Nevada Board.”

Concerning "Native American Gaming Regulations":¹¹

- “The NIGC [National Indian Gaming Commission] will not approve a management contract if a director or a 10% shareholder of the management company: (i) is an elected member of the governing body of the Native American tribe which is the party to the management contract; (ii) has been or subsequently is convicted of a felony or gaming offense; (iii) has knowingly and willfully provided materially important false information to the NIGC or the tribe; (iv) has refused to respond to questions from the NIGC; or (v) is a person whose prior history, reputation and associations pose a threat to the public interest or to effective gaming regulation and control, or create or enhance the chance of unsuitable activities in gaming or the business and financial arrangements incidental thereto.”
- “Native American tribes are sovereign nations with their own governmental systems, which have primary regulatory authority over gaming on land within the tribes’ jurisdiction. Therefore, persons engaged in gaming activities on tribal lands, including the Company, are subject to the provisions of tribal ordinances and regulations. Tribal gaming ordinances are subject to review by the NIGC under certain standards established by the IGRA [Indian Gaming Regulatory Act].”

Concerning "Gaming Regulations in Other Jurisdictions"

- “If we become involved in gaming operations in any other jurisdictions, such gaming operations will subject us and certain of our officers, directors, key employees, equity holders and other affiliates (“Regulated Persons”) to strict legal and regulatory requirements, including mandatory licensing and approval requirements, suitability requirements, and ongoing regulatory oversight with respect to such gaming operations.”

Specifically, there are explicit conditions attached to any transfer of equity interests in Station Casinos in the Order of Registration of Red Rock Resorts, Inc. (File No. SD-232), which was approved by the Nevada Gaming Commission on Jan. 21, 2016. According to the document, equity holders, including GACC:

shall not, without the prior administrative approval of the [Gaming Control] Board Chairman, sell, assign, transfer, pledge or otherwise dispose of any non-voting membership interest in Station Holdco LLC held by it or any other security held by it that is convertible or exchangeable into an interest in Station Holdco LLC. Requests for administrative approval by the direct or indirect members of Station Holdco LLC to sell, assign, transfer, pledge or otherwise dispose of any direct or indirect non-voting membership interest shall include the name, date of birth, social security number and any other such information as the Board may require on the prospective direct or indirect member. If the request for administrative approval is made by an entity rather than a natural person, such request shall include the names, dates of birth, social security numbers and any other such information as the Board may require on the officers and directors of the prospective member, and, if applicable, any person holding, directly or indirectly, more than five percent (5%) voting or economic interest in the new member or equity holder. The [Nevada Gaming] Commission may require, upon the recommendation of the Board, any direct or indirect member of Station Holdco LLC to file an application for licensure or a finding of suitability.¹²

We believe Deutsche Bank is well aware of the unique requirements of Nevada gaming regulations and the conditions attached to its Station Casinos stake. Two bank executives are among the six individuals who are on the Board of Managers of Station Holdco LLC: Enrico Sanna, the bank's Global Head of Operating Assets,¹³ and Jeffrey Welch, Managing Director and Senior Counsel.¹⁴ Surely the bank understands that if GACC were to enter Chapter 11 proceedings, its creditors would not be permitted to take ownership in Station Casinos without first receiving approval from authorities in Nevada and the two sovereign Native American tribes whose casinos Station Casinos manages. Nevertheless, this information concerning its valuable casino asset is not included in the bank's public living will.

While materiality is not explicitly defined in the 165(d) Rule, we believe SEC Regulation S-X is helpful in this regard. Section 201.1(o) states:

The term *material*, when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters about which an average prudent investor ought reasonably to be informed.¹⁵

Information concerning an asset that could almost pay for the bank's Coco coupons this year or improve its Tier 1 capital ratio by several basis points should be "material to an understanding of the covered company".¹⁶ The same information that would be useful to a prudent investor ought to be known to prudential regulators as well.

In fact, the lack of information about Deutsche Bank's valuable casino stake raises questions about the lack of information about its owner, GACC, in the bank's public living will.

2. German American Capital Corporation, a significant subsidiary of the bank, should be considered a material entity requiring treatment in the bank's public living will

Deutsche Bank is commonly recognized as a major commercial real estate lender,¹⁷ and it topped the U.S. CMBS bookrunners league tables in 2014 and 2015.¹⁸

And GACC is the subsidiary that originates much of the bank's commercial real estate loans. See, for example, how it is described in a preliminary prospectus for a recent CMBS issue (424H by Deutsche Mortgage & Asset Receiving Corp. on Jan. 14, 2016):¹⁹

GACC is engaged in the origination of commercial mortgage loans with the primary intent to sell the loans within a short period of time subsequent to origination into a commercial mortgage backed securities primary issuance securitization or through a sale of whole loan interests to third party investors. GACC originates loans primarily for securitization; however, GACC also originates subordinate mortgage loans or subordinate participation interests in mortgage loans, and mezzanine loans (loans secured by equity interests in entities that own commercial real estate), for sale to third party investors.

GACC originates loans and aggregates and warehouses the loans pending sale via a commercial mortgage back securities ("CMBS") securitization.

And it has engaged in the business for "more than ten years".

GACC originates both fixed rate and floating rate commercial mortgage loans backed by a range of commercial real estate properties including office buildings, apartments, shopping malls, hotels, and industrial/warehouse properties. The total amount of loans securitized by GACC from Oct 1, 2010 through December 31, 2015 is approximately \$44.632 billion.

Given the liquidity and counterparty risks inherent in loan warehousing, it is odd that "German American Capital Corporation" appears only once in the bank's public living will, in a paragraph describing the "material holding company" Deutsche Bank Americas Holdings Corp (DBAHC):

DBAHC, a Delaware corporation, is a wholly owned subsidiary of DB USA Corporation, which is wholly owned by DBAG. DBAHC serves as a holding company for a number of subsidiaries, including DB Energy Trading LLC, German American Capital Corporation, Deutsche Investment Management Americas Inc., DBAH Capital, LLC, RoPro U.S. Holding Inc, and DB Alex. Brown Holdings Incorporated, the holding company for a portion of Private Wealth Management's investment and brokerage business.²⁰

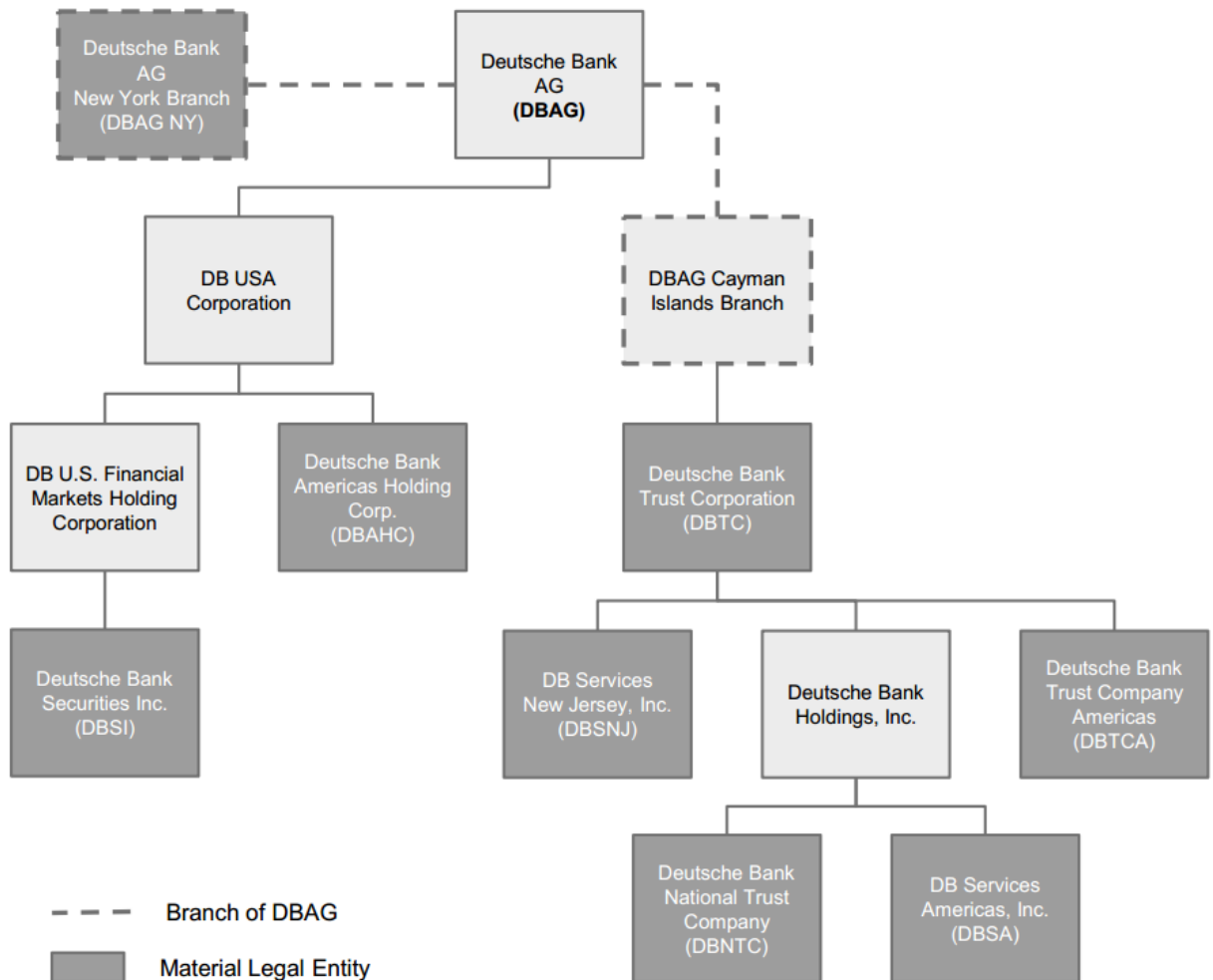
After some summary description of DBAHC's role as an employer of members of the bank's U.S. management and its role as the sponsor of the bank's U.S. pension plans, the section on DBAHC concludes with this sentence: "There are no core business lines conducted out of DBAHC."²¹ It is as if GACC does not conduct any business at all, if one were to understand Deutsche Bank's U.S. business purely on the basis of its public living will.

But, GACC is described as a "significant subsidiary" in Deutsche Bank's other regulatory filings. In a section entitled "Organizational Structure" in the bank's most recent Form 20-F, filed on March 30, 2015, there is a table listing the "significant subsidiaries" of Deutsche Bank AG as of December 31, 2014, with "significance" determined according to Section 1-02(w) of Regulation S-X. GACC is included in the table.²²

Subsidiary	Place of Incorporation
DB USA Corporation ¹	Delaware, United States
Deutsche Bank Americas Holding Corporation ²	Delaware, United States
German American Capital Corporation ³	Delaware, United States
DB U.S. Financial Markets Holding Corporation ⁴	Delaware, United States
Deutsche Bank Securities Inc. ⁵	Delaware, United States
DB Structured Products, Inc. ⁶	Delaware, United States
Deutsche Bank Trust Corporation ⁷	New York, United States
Deutsche Bank Trust Company Americas ⁸	New York, United States
Deutsche Bank Luxembourg S.A. ⁹	Luxembourg
Deutsche Bank Privat- und Geschäftskunden Aktiengesellschaft ¹⁰	Frankfurt am Main, Germany
DB Finanz-Holding GmbH ¹¹	Frankfurt am Main, Germany
Deutsche Postbank AG ¹²	Bonn, Germany
DWS Holding & Service GmbH ¹³	Frankfurt am Main, Germany

This significant subsidiary GACC is described in note 3 to the table: “German American Capital Corporation is engaged in purchasing and holding loans from financial institutions, trading and securitization of mortgage whole loans and mortgage securities, and providing collateralized financing to counterparties.”

However, in the bank’s public living will, GACC is not even identified as a material entity. The document contains the following graph:



Commercial real estate lending by GACC falls under Corporate Banking & Securities (CB&S),²³ which is one of the bank's "four core business" divisions, according to its 20-F.²⁴ Deutsche Bank's public living will thus appears to fall short of "map[ping] its core business lines and critical operations to material legal entities, credit and other exposures; funding, capital, and cash flows; the domestic and foreign jurisdictions in which it operates; and its supporting information systems for core business lines and critical operations," as is required by the Section 165(d) Rule.

It is not clear why GACC, a significant subsidiary in Deutsche Bank's 20-F filing, is not considered a material entity by the bank when it filed its public living will, which then of course also does not contain any description of a resolution strategy for GACC. Furthermore, Deutsche Bank's public living will does not make any reference to the bank's commercial real estate, CMBS, or even securitization businesses. This is especially odd as the "risk retention" rule for CMBS issuers, pursuant to Section 15G of the Dodd-Frank Act, will come into effect in before the end of 2016.²⁵

If you have any question about the issues raised in this letter, please feel free to contact me at 702-387-7001 or kliu@unitehere.org.

Sincerely,



Ken Liu
Research Director
UNITE HERE Culinary Local 226

cc: Jacques Brand, CEO of North America, Deutsche Bank AG
Seth Waugh, Chairman, Americas Advisory Board, Deutsche Bank AG
Mike Sutera, Supervisory Manager, New York Federal Reserve Bank
Daniel A. Muccia, Senior Vice President, New York Federal Reserve Bank
Maria T. Vullo, Acting Superintendent, New York Department of Financial Services

Notes

¹ Available at <http://www.federalreserve.gov/bankinforeg/resolution-plans.htm>.

² See Station Casinos LLC, 10-K, filed 3/10/15.

³ Christopher Palmeri, "Fertitta brother Said to Weight IPO for Station Casinos," *Bloomberg*, 5/27/15, at <http://www.bloomberg.com/news/articles/2015-05-27/fertitta-brothers-said-to-weigh-share-sale-for-station-casinos>.

⁴ "Deutsche Bank's Woes Threaten CoCo Coupons, CreditSights Says," *Bloomberg*, 2/8/16, at <http://www.bloomberg.com/news/articles/2016-02-08/deutsche-bank-s-woes-threaten-coco-coupons-creditsights-says>.

⁵ "A message from Marcus Schenck: Deutsche Bank's Additional Tier 1 (AT1) capital," 2/8/16, at https://www.db.com/newsroom_news/2016/ghp/a-message-from-marcus-schenck-deutsche-bank-s-additional-tier-1-at1-capital-en-11386.htm?kid=pr.inter-ghpen.news

⁶ Nicholas Comfort, "Deutsche Bank to raise up to \$4 billion from Huaxia sale," *Bloomberg*, 12/28/15, at <http://www.bloomberg.com/news/articles/2015-12-28/deutsche-bank-says-picc-to-acquire-firm-s-20-stake-in-hua-xia>.

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- ⁷ Deutsche Bank will continue to own 16% of Station Casinos after the IPO, according to Station Casinos CFO Marc Falcone's presentation in front of the Nevada Gaming Control Board on January 21, 2016.
- ⁸ Station Casinos LLC, 10-K, filed 3/22/12, p. 12.
- ⁹ Jennifer L. Carleton and Andrew D. Moore, "Gaming Restructuring in Nevada," *UNLV Gaming Law Journal*, Vol. 3:7, 6/6/12, available here: <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1031&context=glj>
- ¹⁰ Red Rock Resorts, Inc., S-1/A, filed 2/12/16, p.126ff. Available at <https://www.sec.gov/Archives/edgar/data/1653653/000104746916010139/a2227114zs-1a.htm>.
- ¹¹ Station Casinos manages two Native American gaming facilities: Graton Resort & Casino in California and the Gun Lake Casino in Michigan.
- ¹² Paragraph 47 of Red Rock Resorts, Inc. – Order of Registration, 1/21/16, available at <http://gaming.nv.gov/index.aspx?page=31&parent=10790>.
- ¹³ <https://www.linkedin.com/in/enrico-sanna-ba115b>.
- ¹⁴ <http://www.martindale.com/Jeffrey-T-Welch/521719-lawyer.htm>
- ¹⁵ <https://www.law.cornell.edu/cfr/text/17/210.1-02>
- ¹⁶ Available on <http://www.federalreserve.gov/bankinfo/reg/resolution-plans.htm>.
- ¹⁷ See, for example, Konrad Putzier, "Ranking New York's biggest real estate lenders," *The Real Deal*, 11/1/15, at http://therealdeal.com/issues_articles/ranking-new-yorks-biggest-real-estate-lenders/.
- ¹⁸ "U.S. CMBS Bookrunners in 2015", on Commercial Mortgage Alert, at <https://www.cmalert.com/rankings.pl?Q=68>.
- ¹⁹ Deutsche Mortgage & Asset Receiving Corp., 424H, filed 1/14/16. See p. 194ff.
- ²⁰ Deutsche Bank AG U.S. Resolution Plan – Public Section, p. 13.
- ²¹ Deutsche Bank AG U.S. Resolution Plan – Public Section, p. 14.
- ²² Deutsche_Bank_20_F_2014, filed on 3/20/2015, pp.61.
- ²³ Financial Report, p. 18, in Deutsche Bank AG, Form 20-F filed on 3/20/2015.
- ²⁴ Deutsche Bank AG, Form 20-F, filed on 3/20/2015, p.36.
- ²⁵ "Less than a year away, CMBS market braces for risk retention," *Trepp Talk*, 1/11/16, at <http://info.trepp.com/treptalk/less-than-a-year-away-cmbs-market-braces-for-risk-retention>.