Center for Capital Markets Competitiveness

Tom Quaadman
Executive Vice President

1615 H Street, NW
Washington, DC 20062-2000
(202) 463-5540
tquaadman@uschamber.com

February 25, 2019

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Dear Chairman Powell:

The U.S. Chamber of Commerce ("the Chamber") created the Center for Capital Markets Competitiveness (CCMC) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st Century economy. A key aspect of efficiency of the financial system is ensuring transparency with regard to regulatory and supervisory processes. As you noted in a speech last May, "in the financial stability realm, the case for enhanced transparency is not just about being accountable; it is also about providing credible information that can help restore and sustain public confidence in the financial system."[1]

With that in mind, the Chamber is concerned with the lack of transparency and accountability with the Board of Governors of the Federal Reserve System's ("Federal Reserve") Large Institution Supervision Coordinating Committee ("LISCC"), which is an enhanced regulatory and supervisory regime for large and complex financial institutions.[2] The Chamber believes improved transparency for operation of the LISCC will contribute to more appropriately tailored supervision and more efficient capital markets that allows for lending to businesses and economic growth.

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[1] Powell, J. H. Financial Stability and Central Bank Transparency. Speech presented at "350 years of Central Banking: The Past, the Present and the Future," A Sveriges Riksbank anniversary conference sponsored by the Riksbank and the Riksdag in Sweden, Stockholm. Available at https://www.federalreserve.gov/newsevents/speech/powell20180525a.htm

[2] https://www.federalreserve.gov/supervisionreg/large-institution-supervision.htm

LISCC designation subjects firms to heightened regulatory and supervisory requirements[3] relating to capital adequacy and capital planning,[4] liquidity sufficiency, corporate governance,[5] and recovery and resolution.[6] These requirements, which have serious consequences for designated firms and the business end-users they serve, were never promulgated as part of formal rulemakings subject to notice and comment. Furthermore, these requirements are broadly applied to all the LISCC portfolio firms and therefore not appropriately tailored.

The process for designation is similarly opaque. The Federal Reserve never issued a rule to establish the process and criteria for designation of firms into the LISCC. Indeed, the Federal Reserve never even publicly announced the creation of the LISCC (it was first discussed after the fact in the Federal Reserve's 2010 annual report).[7] To this day, the Federal Reserve provides little information on the process and criteria for designation other than saying that it considers some very broad factors[8] and that the list of LISCC firms "may" be adjusted upon review.[9] As such, firms have been included in the LISCC portfolio due to discretionary judgment rather than any sort of clear and objective criteria. These firms have no recourse for appealing such decisions. And with the lack of any formal mechanism for review, not to mention any clear and objective criteria to guide such a review, they continue to be deprived of due process.

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[3] SR 12-17 / CA 12-14: Consolidated Supervision Framework for Large Financial Institutions

[4] e.g. "[A] LISCC firm that is a large and noncomplex firm would no longer be subject to the qualitative component of the CCAR assessment or the provisions of the capital plan rule whereby the Board may object to the firm's capital plan; however, the firm would remain subject both to the Board's highest expectations for capital planning as set forth in SR Letter 15-18 and to ongoing supervisory scrutiny of its capital planning practices." 82 FR 9308.

[5] SR 15-7: Governance Structure of the Large Institution Supervision Coordinating Committee (LISCC) Supervisory Program.

[6] SR 14-8: Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies.

[7] https://www.federalreserve.gov/publications/annual-report/2010-banking-supervision-regulation.htm

[8] "The Federal Reserve takes into account a number of factors such as the size of the financial institutions, their interconnectedness, lack of readily available substitutes for the services they provide, their complexity, and their global (cross-jurisdictional) activities." However, these factors, which are vague, were never subject to notice and comment rulemaking. https://www.federalreserve.gov/supervisionreg/large-institution-supervision.htm

[9] https://www.federalreserve.gov/supervisionreg/large-institution-supervision.htm

Consistent with the Federal Reserve Reform Agenda we released in 2016, which calls for increased transparency and accountability for rulemaking,[10] the Chamber recommends the following reforms to enhance the transparency and accountability of the LISCC including:

1) Establish specific criteria, through notice and comment rulemaking, for firms to be included in the LISCC portfolio;

2) Establish a formal mechanism with specific criteria, subject to notice and comment rulemaking, for a periodic review for whether firms should be included in the LISCC portfolio or that prescribes an avenue by which firms may appeal such decisions; and,

3) Subject all enhanced regulatory requirements imposed on LISCC firms, including supervisory letters, to notice and comment rulemaking and cost-benefit analysis.

Thank you for taking our recommendations under consideration. We stand ready to assist you in implementing reforms to the LISCC.

Sincerely,

Tom Quaadman

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[10] U.S. Chamber of Commerce Center for Capital Markets Competitiveness, "Federal Reserve Reform: Securing Regulatory Transparency and Accountability" (Summer 2016), available at https://www.uschamber.com/sites/default/files/documents/files/ccmc_-_federal_reserve_reform_agenda.pdf