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Re: Notice of Proposed Rulemaking Implementing Revisions to Prudential Standards for Large Foreign Banking Organizations – Docket No. R-1658 and RIN 2019-07895 (Federal Reserve)

Joint Notice of Proposed Rulemaking Implementing Revisions to Regulatory Capital Requirements and Liquidity Requirements for Foreign Banking Organizations and Certain U.S. Subsidiaries of Foreign Banking Organizations – Docked ID OCC-2018-0037 and RIN 1557-AE56 (OCC); Docket No. R-1628 and RIN 7100-AF21 (Federal Reserve); RIN 3064-AE96 (FDIC)

To Whom It May Concern:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System ("Federal Reserve") Notice of Proposed Rulemaking

Implementing Revisions to Prudential Standards for Large Foreign Banking Organizations (the "Proposal") and the joint proposal from the Federal Reserve, the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively the "Agencies") entitled, "Joint Notice of Proposed Rulemaking Implementing Revisions to Regulatory Capital Requirements and Liquidity Requirements for Foreign Banking Organizations and Certain U.S. Subsidiaries of Foreign Banking Organizations" (the "Joint Proposal"). The Joint Proposal also includes a request for comment on whether the Board should impose a standardized liquidity requirement on the U.S. branches of a foreign bank.

The Chamber is submitting one comment letter to address both notices (jointly the "Proposals") given the interconnectedness of the regulatory framework and the identical methodology for the applicability of tailoring across foreign banking organizations (also "FBOs" or "international banks". The Chamber will submit a separate comment letter on the Agencies' proposal to tailor resolution planning requirements.

When the Economic Growth, Regulatory Reform, and Consumer Protection Act ("EGRRCPA") was under consideration by Congress, the Chamber stated, "Main Street businesses depend on community and regional banks for the capital necessary to get started, sustain operations, manage cash, make payroll, and create well-paying jobs. The post-financial crisis 'one-size-fits-all' regulatory regime has severely constrained these banks' ability to serve households and small businesses in their communities."

International banks are a key source of capital in the U.S., and contribute to deep and liquid markets that fuel lending and help U.S. businesses thrive in a number of ways. The U.S. operations of foreign banking organizations have total assets that exceed $4.5 trillion, which represents about 20% of our banking system. For example, these banks, provide one-third of the small business loans in the U.S., giving direct financing to job creators that drive economic growth; and, provide financing to help businesses expand their customer base by accessing overseas markets.

The Chamber strongly believes requirements imposed on foreign banking organizations should be tailored in a similar way to their domestic peers to ensure they are able to serve their retail and commercial customers and contribute to vibrant and competitive capital markets in the U.S. Many foreign banks operate as regional banks in the United States, and it is the opinion of the Chamber that the location of their global headquarters should have no bearing on their regulatory treatment of their U.S. operations.

According to a recent survey from the U.S. Chamber of Commerce, **88% of businesses believe that foreign banks operating in the U.S. should be held to the same regulatory standards as U.S. banks** – likely because they recognize the critical services and competition provided by these financial institutions.[1]

Last year, the Chamber wrote a letter to the Agencies expressing the importance of tailoring certain capital and liquidity requirements with the aim of improving small business lending. The letter noted, in part, that "Foreign banks should receive commensurate regulatory treatment to U.S. bank holding companies (BHCs); anything short of this could put American financial markets at a comparative disadvantage and risk retaliatory actions by foreign regulators against U.S. banks operating abroad. Careful examination and tailoring is needed to ensure that our financial markets remain diverse and resilient, ensuring access to credit and financial services for businesses that provide jobs and fuel U.S. economic growth."[2]

The Chamber believes in the stated intention of the Proposals: appropriate tailoring and reforms that encourage lending and capital formation for Main Street. However, the Proposals try to accomplish this without first recognizing the unique business models of foreign banking organizations in the U.S. The Chamber requests that the Agencies consider the following recommendations to improve the Proposals:

I. Impact of Regulation on Nonfinancial Companies
II. Existing Regulation and Risk of Retaliation
III. Tailor Regulatory Requirements
IV. Changes Risk-Based Indicators
V. Request for Comment on Liquidity Requirements for Foreign Branches

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[1] Financing Main Street: The State of Business Financing in America. Spring 2019. Available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2019/04/CCMC_CorpTreasurerSurvey_v4_DIGITAL.pdf

[2] See letter on bank capital priorities, U.S. Chamber of Commerce, November 9, 2018, available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/11/181108_Comments_BankCapitalRules_OCCFedFDIC-002-Final.pdf?#

I. Impact of Regulation on Nonfinancial Companies

The Chamber is concerned with the potential impact of increased regulation, not only as it directly affects financial institutions, but also the impact to the customers of these institutions – and ultimately the cost of capital.

As a threshold matter, policymakers should be concerned that small business lending by financial institutions dropped by nearly 50 percent – loans less than $1 million dropped from 2.5 percent of gross domestic product in 2001 to 1.7 percent in 2017, and such loans make up a smaller portion of total bank assets, dropping from 4.0 percent in 2001 to 2.1 percent in 2016.[3] This concerning trend must be addressed as the Agencies consider changes regulations imposed on financial companies that indirectly impede the ability of their customers to access the credit they need to grow.

The Chamber regularly conducts a survey of corporate treasurers, chief financial officers, and other corporate financial professionals to inform our understanding of how financial regulations, and other policies, affect their financing needs. Through this input, the Chamber has confirmed that regulations imposed on the financial sector have broad, tangible implications for nonfinancial companies and the overall economy.

After a challenging decade that included a financial meltdown, recession, and a historically slow recovery, American businesses are reporting that their ability to access capital is steadily improving, and generally that they are optimistic about their expected performance over the next 12 months.[4] This improvement is a welcome development, given the difficulties Main Street businesses had raising capital in the years immediately following the financial crisis.

A key component of a strong financial system is a regulatory structure that promotes economic growth. Unfortunately, the post 2008 financial crisis regulatory

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[3] Angel, J. (fall 2018). Impact of Bank Regulation on Business Lending. U.S. Chamber of Commerce Center for Capital Markets Competitiveness. Retrieved from https://www.centerforcapitalmarkets.com/wpcontent/uploads/2018/09/CCMC_RestoringSmallbi zLendingReport_9.10.18-1.pdf

[4] Financing Main Street: The State of Business Financing in America. Spring 2019. Available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2019/04/CCMC_CorpTreasurerSurvey_v4_DIGITAL.pdf

response imposed enormous costs on the economy while doing little to fundamentally reform the U.S. financial regulatory system. As a result, Main Street businesses found it more difficult to access the capital they needed to innovate, grow, and hire new employees.

The survey, which includes insight from more than 300 corporate finance professionals, illuminates their attitudes regarding financial regulation. Lingering effects of the post-financial crisis regulatory response in the U.S. and abroad continue to present a challenge to American businesses. Bank capital charges in particular are cited as an impediment to capital access. The survey finds that among American businesses:

- 82% report taking some action as a result of changes to banking regulations, up from 61% in 2013 and 79% in 2016.
- 45% report absorbing the higher costs of banking services and loans, while 28% report increasing prices for customers as a result of financial regulation.
- 27% report substituting or reducing the number of financial institutions that provide services to them.
- 66% report that increased bank capital charges have led to increased costs or other challenges, up from 50% in 2016.
- 63% support federal regulators recalibrating capital requirements for large banks when lending money to small businesses.

The effects of financial regulation on Main Street, including the customers of covered financial institutions, must be addressed in the rulemaking process. This is especially true given the troubling regulatory trend facing foreign banking organizations in recent years.

Notably, it has become measurably more difficult to meet the needs of American businesses as it relates to capital markets and asset management activities. The market share of FBOs in capital markets and asset management has declined and U.S. banks are not filling in all the gaps, according to data compiled by SIFMA.[5] This is evidence that American businesses will have more trouble accessing the financing

[5] SIFMA Insight: The Importance of FBOs to US Capital Markets. April 2019. Available at https://www.sifma.org/wp-content/uploads/2019/04/SIFMA-Insights-The-Importance-of-FBOs-to-US-Capital-Markets.pdf

they need to grow, and that the competition that is a fundamental part of our financial markets has suffered.

Furthermore, research shows that technological progress is also positively influenced by a higher presence of foreign banks. Thus, regulatory Proposals that would decrease the presence of foreign banks in an economy may indirectly decrease its technological progress thus limiting its growth potential.[6]

II. Regulatory Cooperation and Financial Institution Ring-Fencing

In general, the Chamber has taken issue with actions by regulatory authorities that impede the efficient flow of capital in global financial markets or create an un-level playing field that discourages healthy competition. Beginning in 2013 with the establishment of the Intermediate Holding Company ("IHC") requirement, the Chamber has expressed concern with actions by regulatory authorities that discriminate against foreign domiciled organizations. Additionally, we have strongly advised against gold-plating international agreed upon standards. Regulatory authorities should approach the regulation of international banks with an intent to improve the efficiency of the global regulatory structure, thus improving the flow of capital throughout global financial markets.

The Chamber is concerned with the growing movement towards ring-fencing the operations of foreign domiciled financial firms. Ring-fencing contributes to inefficient and redundant regulation of firms, which increases compliance costs and unnecessarily traps capital and liquidity so it cannot be efficiently deployed in times of stress. Additionally, the Chamber is concerned with the precedent of the IHC ring-fencing standard will set for foreign regulatory jurisdictions and the potential requirements imposed on U.S. firms abroad.

[6] Thakor, A. (n.d.). International Financial Markets: A Diverse System Is the Key to Commerce (Rep.). Available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/021881_SourcesofCapital_fin.pdf

A report from the Chamber in 2015 finds that the benefits of international financial system can be experienced by a country only if it is open to international financial flows, and the more open the country, the greater the benefit.[7]

The Chamber believes that home-country regulation should be taken under consideration when determining whether to impose new requirements on the U.S. operations – including the IHC and U.S. branches – of a foreign banking organization.

a. Intermediate Holding Company Regulation

The Chamber raised concerns with the discriminatory treatment of foreign banks operating in the United States when the Federal Reserve finalized its proposal for Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies in 2013. The Chamber noted that "the Proposal – and potential overseas retaliatory actions – will place American businesses at a competitive disadvantage, harming economic growth and job creation."[8]

The Chamber's letter stated, "Such a move would require significant internal reorganization that is costly, complex, and difficult. . . This could lead many FBOs to consider curtailing their U.S. activities, ultimately limiting products and services available to U.S. customers." The Chamber also noted, "it is reasonable to infer that . . . foreign nations will require American banks to face similar or more restrictive ring fenced capital structures that will impede the operation of American banks overseas."[9]

There is significant evidence to demonstrate the validity of these predictions. According to SIFMA, "FBO total assets declined 52% over the last eight years – a

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[7] Thakor, A. (n.d.). International Financial Markets: A Diverse System Is the Key to Commerce (Rep.). Available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/021881_SourcesofCapital_fin.pdf

[8] See letter on Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies; FR Doc 1438 and RIN-7100- AD-86, U.S. Chamber of Commerce, April 30, 2013, available at https://centerforcap.wpengine.com/wp-content/uploads/2013/08/2013-4.30- CCMC_FBO_Comment-Letter.pdf

[9] ibid.

dramatic shock to a core source of funding in the U.S. – and FBO market share in investment banking activities (bond issuance, loan origination) is down by essentially one-third, to 24% of top 10 fee revenues."[10]

b. Intermediate Parent Undertaking Regulations

Notably, the European Union has moved forward with corollary ring-fencing requirements to the U.S. IHC requirements. The European Union would require a non-E.U. group that has two more banks or investment firms established in the jurisdiction to set up an Intermediate Parent Undertaking (IPU) if they have activities of at least $40 billion.

It is reasonable to infer the E.U. would place more restrictive requirements on U.S.-domiciled banking organizations, through its IPU regulations, or otherwise, if E.U.-domiciled banking organizations are subject to discriminatory regulatory treatment abroad, including the U.S..

U.S. policymakers should encourage a regulatory posture that reduces barriers to entry and encourages economic growth domestically and abroad. The U.S. can accomplish this goal through its position as a leader on the global stage, and further as it sets its regulatory posture for foreign banking organizations.

III. Treatment of Foreign Banks Under the Agencies' Proposals

In general, the Chamber supports the tailoring of requirements imposed on foreign banking organizations. However, the approaches used by the Agencies for determining the risk of these organizations causes the application of inappropriate regulatory requirements.

According to the Proposals, a foreign banking organization with $100 billion or more in total consolidated assets and a significant U.S. presence would be subject to Category II, Category III, or Category IV enhanced prudential standards depending on the size of its U.S. operations and the materiality of the same risk-based indicators

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[10] SIFMA Insight: The Importance of FBOs to US Capital Markets. April 2019. Available at https://www.sifma.org/wp-content/uploads/2019/04/SIFMA-Insights-The-Importance-of-FBOs-to-US-Capital-Markets.pdf

that were included in the domestic proposal (Cross-jurisdictional activity, nonbank assets, off-balance sheet exposure, and weighted short-term wholesale funding).

Foreign banking organizations with $100 billion or more in total consolidated assets that do not meet the thresholds for application of Category II, Category III, or Category IV standards due to their limited U.S. presence would be subject to requirements that largely defer to compliance with similar home-country standards at the consolidated level, except for certain risk-management standards.

The Chamber has consistently noted the importance of commensurate regulation of foreign banks operating in the U.S. compared to American domiciled banking organizations. Most recently, the Chamber noted frustration with the delay for tailoring requirements imposed on foreign banking organizations.[11]

The Proposals do not regulate the U.S. operations of foreign banks in a similar way to their domestic BHC peers. Instead, they require the FBOs to maintain significantly more liquidity than a similarly situated domestic BHC, even though their U.S. risk profiles may be identical. This additional regulation seems to stem from nothing more than an IHC's parent being located outside of the U.S.

If foreign banks are suddenly put at a regulatory disadvantage simply because of their non-U.S. parent, we worry that there will be reduced competition in the provision of credit and capital markets activities that will ultimately hurt not only the customers of foreign banking organizations, but the financial system at large.

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[11] See letter on Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies – Docket No. R-1627 and RIN 7100-AF20; Proposed changes to applicability thresholds for regulatory capital and liquidity requirements – Docket ID OCC-2018-0037 and RIN 1557-AE56 (OCC); Docket No. R-1628 and RIN 7100-AF21 (Federal Reserve); RIN 3064- AE96 (FDIC); U.S. Chamber of Commerce, January 22, 2019, available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2019/01/1.22.19-Comments_ApplicabilityThresholds_OCC.Fed_.FDIC_.pdf?#

IV. Use of CUSO for Determining Regulation at the IHC

In general, the Chamber supports the intent of the Agencies to tailor regulations for foreign banks' U.S. operations. However, outside of the proposed tailoring for capital-related provisions, the inclusion of branch and agency assets for determining the level of regulation at the IHC is extremely problematic. In general, the Chamber believes the application of Enhanced Prudential Standards ("EPS") based on Combined U.S. Operations ("CUSO") is inappropriate.

The Proposals should only consider the operations of the Intermediate Holding Company (IHC). The application of EPS based on branch operations is redundant to their existing home country regulation.

Application of Enhanced Prudential Standards based on CUSO appears to be an indirect route for regulating the branch activity of foreign banking organizations by applying potentially more severe requirements on the IHC. This not only violates the principles of national treatment and competitive equality, but also does not address the perceived risk assumed by the Agencies.

It is misguided to mitigate that risk by increasing the level of liquidity held at the IHC if the perceived risk to the U.S. system lies within the branches and agencies of foreign banks. The agencies do not provide supporting evidence that increasing requirements on the IHC will be an effective means of addressing perceived vulnerabilities across the CUSO.

The Proposals would not appear to meet the Agencies' objectives of limiting risk at the U.S. branches. Due to a number of existing regulations (for example, Section 23A of the Federal Reserve Act and Regulation W) the funding between IHCs and the branches and agencies of their parent company is not fungible. Therefore, the increased liquidity required to be held at the IHC pursuant to the Joint Proposal, held to conceivably mitigate risk at the branch, could not be accessed in a time of stress. Instead, the result is over pre-positioning of liquidity that limits flexibility to allocate resources efficiently across a bank.

Additionally, the Proposals would prematurely calibrate the Net Stable Funding Ratio to certain categories of foreign banking organizations before the Agencies have done an impact analysis. The NSFR did not include an impact analysis on the U.S. operations of FBOs. The Federal Reserve's original impact analysis did not include IHCs given they had not yet formed at the time of the NSFR proposal. No publiclyreleased impact analysis is inconsistent with the Federal Reserve's principle of efficient of regulation.[12]

V. Risk-Based Indicators

The Proposals should recognize the unique business model and regulatory treatment of foreign banking organizations when applying the risk-based indicators that were developed for domestic banking organizations. Based on current profiles, the categorization of U.S. banking holding companies is driven almost exclusively by total assets and not by risk-based indicators (RBI). Conversely, foreign banking organizations are pushed by risk-based indicators into more stringent categories, and total assets are less relevant. The Chamber recognizes this may be challenging, but believes that competitive advantages/disadvantages can be mitigated through a holistic consideration of the regulation imposed on foreign banking organizations.

The Chamber recommends reconsideration of the $75 billion threshold for risk-based indicators.[13] This threshold appears to be arbitrary and the Chamber requests further information on why this threshold was used for each RBI; this transparency will improve the public's understanding the Agencies' approach to

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[12] The Federal Reserve is an independent agency, but it has avowed that it follows policies consistent with Executive Order 13563, which requires, Agencies promulgating rules to "Propose or adopt a regulation only upon a reason determination that its benefits justify its costs," and " . . . each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible."
Additionally, the Agencies are subject to regulatory impact analysis requirements under the Riegle Community Development and Improvement Act of 1994.

[13] Any changes to the RBIs should also be applicable to the categorizing of domestic banking holding companies consistent with the tailoring proposals currently under consideration so these proposal are appropriately aligned. Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies – Docket No. R-1627 and RIN 7100-AF20 Proposed changes to applicability thresholds for regulatory capital and liquidity requirements – Docket ID OCC-2018-0037 and RIN 1557-AE56 (OCC); Docket No. R-1628 and RIN 7100-AF21 (Federal Reserve); RIN 3064-AE96 (FDIC)

categorizing firms for varying levels of regulation. As part of this process, the Agencies should consider increasing the threshold.

a. Treatment of inter-affiliate transactions

The Proposals should remove inter-affiliate transactions with non-U.S. affiliates from all risk-based indicators. Such an adjustment would better recognize the unique structures of foreign banking organizations and would be consistent with the principle of national treatment, ensuring that the risk-based indicators do not discriminate against the U.S. operations of these banks based on the fact that they are owned by a foreign parent. This would help ensure IHCs are treated comparably to a similarly-situated U.S. bank holding company (BHC).

b. Non-Bank Asset Threshold

The Federal Reserve should reconsider its use of an arbitrary nonbank assets threshold. The Federal Reserve appears to be operating on the premise that nonbank activities are inherently riskier than bank activities.

The Federal Reserve's Proposal states, "The crisis experience demonstrated that nonbank activities could exacerbate the effects of a banking organization's distress or failure, due to the business and operational complexities associated with these activities." However, the Proposals do not recognize the existing regulation of nonbank assets. For example, broker-dealers are required to register with the Securities and Exchange Commission ("SEC"), where they are subject to substantial regulation and oversight. Furthermore, broker-dealers may be major holders of high quality liquid assets like Treasuries that are less risky than many bank assets.

Moreover, the proposals do not recognize the existing regulation of nonbank activities. Indeed, non-bank activities actually are subject to multiple layers of regulation including from the Federal Reserve, including at the entity level (e.g. SEC regulation of broker-dealers); the Federal Reserve's regulation and supervision at the level of the IHC; and home country requirements.

Short of eliminating this indicator, the Federal Reserve should at least make the non-bank asset indicator more risk sensitive by risk weighting nonbank assets or by deducting high quality liquid assets like Treasuries.

c. Reduced Emphasis on asset-thresholds as a risk-metric

When the Chamber supported the passage of EGRRCPA we wrote it "would better tailor regulations for community and regional banks . . . While provisions such as raising the asset threshold for enhanced prudential standards are an important step, the Chamber continues to strongly support tailored regulations—sophisticated rules that are properly calibrated to the risk profile of an activity or institution."[14]

In general, the Agencies should avoid relying on arbitrary asset thresholds where possible and should index such thresholds to avoid creating regulatory cliffs that stymie organic growth. The Agencies should index the dollar thresholds of the risk-based indicators to growth in U.S. banking assets. Alternatively, the Chamber has proposed indexing asset thresholds to inflation, for example.[15] Indexing would more closely align the risk-based indicators to organic growth of individual firms and the overall economy.

VI. Request for Comment on Liquidity Requirements for Foreign Branches

The Joint Proposal also includes a request for comment on whether the Board should impose a standardized liquidity requirement on the U.S. branches of foreign banking organizations. The Chamber appreciates that the Agencies have not proposed any steps beyond requesting comment; however, we would urge strong caution against any further actions to impose additional requirements on the U.S. branches of foreign banking organizations.

The Chamber believes imposing such a requirement would be misguided. Instead, the Chamber encourages the Agencies to remain focused on tailoring existing regulations imposed on IHCs rather than advancing requirements that would

[14] See letter to U.S. House of Representatives, U.S. Chamber of Commerce, May 21, 2018, available at https://www.uschamber.com/sites/default/files/180521_kv_s2155_economicgrowthregulatoryreliefandconsumerprotection_house.pdf

[15] See letter on bank capital priorities, U.S. Chamber of Commerce, November 9, 2018, available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/11/181108_Comments_BankCapitalRules_OCCFedFDIC-002-Final.pdf?#

undoubtedly make it even more difficult for foreign banking organizations to provide competitive products and services for U.S. businesses.

The Chamber believes imposing a standardized liquidity requirement violates the principle of national treatment that has long been recognized by bank regulators and affirmed by the Dodd-Frank Act Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Section 115 of the Dodd-Frank Act states:

> PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES. — In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall—
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> (A) Give due regard to the principle of national treatment and equality of competitive opportunity; and
>
> (B) Take into account the extent to which the foreign nonbank financial company or foreign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

In addition, branch liquidity is currently regulated and supervised by both the branch's home country and by the Agencies pursuant to Regulation YY.

The Proposal points to borrowing from the Federal Reserve's discount window during 2008-2009 financial crisis as justification for imposing a standardized liquidity requirement on U.S. branches of foreign banking organizations but fails to provide sufficient data, does not recognize the circumstances for such borrowing, and does not take into account new restrictions that have since been imposed.

The Federal Reserve encouraged borrowing during the 2008-2009 financial crisis and indicated such borrowing would be viewed favorably.[16] The Federal Reserve decreased discount window rates and increased the maximum term of credit to lend to institutions in distress.

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[16] Uchitelle, L. (2007, August 18). Fearing Slide in Economy, Fed Cuts Its Discount Rate. The New York Times. Retrieved from
https://www.nytimes.com/2007/08/18/business/18fed.html
available at http://www.citationmachine.net/apa/cite-a-newspaper/manual

The Dodd-Frank Act limits the Federal Reserve's authority to provide emergency liquidity. Specifically, Sec. 716 of the Dodd-Frank Act prohibits use of the discount window by institutions that are registered as swap dealers or major swap participants (with some exceptions). There are also a number of other restrictions to prevent the Federal Reserve from using emergency lending under Section 13(3) of the Federal Reserve Act intended to aid a struggling financial company.

The Agencies should use a robust process to study the consequences of imposing a standardized liquidity requirement on the U.S. branches of a foreign bank prior to the formal consideration of any new requirements. The Agencies should start with a quantitative impact study ("QIS"), with adequate opportunity for input from industry and other constituencies. The Agencies should subsequently publish an advance notice of proposed rulemaking ("ANPR") to provide a process for early comment and evaluation of the QIS results and the Agencies' reasons for considering more stringent requirements at this stage. Then, if justified by the record developed through these processes, the Agencies could follow with the required notice and comment process for a proposed rule.

The Agencies should not lose sight of the clearly stated objectives to tailor the post-crisis regulatory framework. Imposing a new liquidity requirement on the U.S. branches of foreign banks would be inconsistent with this objective. Furthermore, imposing a standardized liquidity requirement on U.S. branches would appear unnecessary given the purported concerns did not materialize in a deleterious way during the financial crisis.

Conclusion

We appreciate the Agencies effort to tailor requirements for foreign banking organizations. The Chamber believes the Proposals have the opportunity to provide meaningful changes that will enable lending and capital formation, but additional actions should be taken to take to recognize the actual risk of these banking organizations. The intention of our recommendations is to ensure a competitive financial system that will decrease the cost of financing for Main Street and improve financial stability.

We are prepared to work with you in this effort.

Sincerely,

Tom Quaadman