BETTER MARKETS

January 22, 2019

Ms. Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies, Docket No. R-1627 and RIN 7100-AF20

Dear Ms. Misback:

Better Markets[1] appreciates the opportunity to comment on the notice of proposed rulemaking captioned above ("Proposal" or "Release"),[2] issued by the Board of Governors of the Federal Reserve System ("Board"), regarding revisions to enhanced prudential standards for large bank holding companies ("BHCs") and savings and loan holding companies ("SHLCs").

The Proposal contains some positive elements, but it also includes a number of de-regulatory provisions that, by themselves and in concert with other sweeping de-regulatory initiatives, pose a significant threat to financial stability and safety and soundness. Those changes conflict with the letter and spirit of the Dodd-Frank Act. Moreover, they lack any persuasive policy rationale, as banks are thriving, the financial markets are robust, and the current regime has proven its worth in shoring up our financial system and better protecting it from the ravages of another financial crisis.

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans' jobs, savings, retirements, and more.

2 83 Fed. Reg. 61,407 (Nov. 29, 2018).

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INTRODUCTION AND SUMMARY

The stated goals of the Proposal are to (1) reduce compliance costs and streamline regulatory requirements for banks, (2) in a manner that would "reflect" amendments made by the Economic Growth, Regulatory Relief and Consumer Protection Act ("S. 2155"), signed into law on May 24, 2018.[3] Broadly speaking, S. 2155 raised the asset-based threshold for the required application of enhanced prudential standards to BHCs from $50 billion to $250 billion, and eliminated most enhanced prudential standards for BHCs with fewer than $100 billion in assets. However, it also gave the Board broad discretion to continue to apply "any" enhanced prudential standards established under Section 165 of the Dodd-Frank Act to BHCs with assets of between $100 billion and $250 billion.

While Better Markets recognizes that a few aspects of the Proposal are positive steps—particularly the proposed application of enhanced prudential standards for large savings and loan holding companies—in other respects, the proposal will unnecessarily increase systemic risk. It is a premature and ill-advised attempt to scale back enhanced prudential standards applicable to some of the largest and most systemically risky BHCs. And the negative impact of the Proposal will be intensified because it will contribute to a much broader collection of de-regulatory measures now being pursued that collectively pose a substantial threat to financial stability.

The proposed de-regulatory changes are not legally required or even justifiable. S. 2155 conferred broad discretion on the Board to maintain or even fortify the prudential regulation of banks with between $100 and $250 billion in assets. And the underlying motivations for the risk-enhancing aspects of the Proposal—decreasing compliance costs for the industry and streamlining regulation—are considerations found nowhere in the relevant statutory standards governing the Board's exercise of that discretion. The Proposal strays further by downplaying the fundamental purpose of the Dodd-Frank Act, which remains fully intact notwithstanding the passage of S. 2155: The Board's primary mandate in establishing or amending any enhanced prudential standards is to ensure that Americans are protected from the extraordinarily damaging consequences of another financial crisis, **not** to help financial companies make (even greater) profits. The proposed de-regulatory measures are especially inappropriate and unnecessary in light of indisputable evidence that the current framework has a proven track record of strengthening banks and increasing financial stability, while at the same time allowing lending activity to thrive and bank profits to soar to historic levels.

The Release contains little substantive analysis justifying any of its risk-intensifying provisions. Until it can provide credible evidence that weakening the prudential regime will not increase the risk of another financial crisis, and is otherwise appropriate and necessary, the Board should refrain from diluting the current requirements for BHCs, especially those with $100 to $250 billion in assets.

[3] Pub. L. No. 115-174 (2018).

BACKGROUND

The 2007-2009 financial crisis was catastrophic for our financial markets, our economy, and millions of American families. In monetary terms, it destroyed $20 **trillion** in GDP.[4] And the human toll resulting from millions of home foreclosures, deep and prolonged unemployment and underemployment, and massive loss of wealth is incalculable, and it continues to be felt today. The Board has a continuing responsibility under the Dodd-Frank Act to exercise its discretionary rulemaking authority to protect and promote financial institution safety and soundness as well as overall financial stability and to prevent another devasting crisis.

Preserving the regulatory reforms enacted in the Dodd-Frank Act is especially critical in part because of the difficulty in identifying all sources of systemic risk in advance. The financial crisis certainly illustrated the point. Financial regulators, and in particular banking regulators, have been heavily criticized for failing to fully appreciate the risks facing banks and other entities they supervised. However, in the runup to the crisis, few appreciated these risks and even fewer appreciated the potential consequences, as the housing market was teetering on the brink of collapse, toxic mortgage-backed securities were spreading like a virus, banks and other financial companies were dangerously over-leveraged and undercapitalized, and sophisticated financial companies were blindly accumulating over-the-counter derivatives positions they could not honor, all of which pushed the global economy to the brink of collapse.

This history shows that it will be extraordinarily difficult, even for experienced financial regulators, to predict in advance the precise contours and causes of the next financial crisis. Specifically, it will be nearly impossible to predict in what sector the crisis will originate, through what financial instruments it might spread, and which entities' failures may exacerbate the crisis. As the Congressional Research Service has put it, "[d]efinitively identifying banks that are systemically important is not easily accomplished, in part because potential causes and mechanisms through which a bank could disrupt the financial system and spread distress are numerous and not well understood in all cases."[5]

What we do know is that dealing with this uncertainty requires being prepared for any number of scenarios through the application of strong prudential standards, including capital, liquidity, and risk management requirements, coupled with robust stress testing. They not only reduce the risk that banks and other financial firms will fail during periods of economic stress, but also ensure that they will be able to continue responsibly serving their core economic functions, such as lending, which can help mitigate the severity of the crisis. Moreover, strong prudential standards serve to assure markets that large financial companies are healthy enough to weather a period of stress.

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4 Better Markets, The Cost of Crisis, $20 Trillion and Counting (July, 2015), https://bettermarkets.com/sites/default/files/Better%20Markets%20-%20Cost%20of%20the%20Crisis.pdf.

5 CONGRESSIONAL RESEARCH SERVICE, ECONOMIC GROWTH, REGULATORY RELIEF, AND CONSUMER PROTECTION ACT (P.L. 115-174) AND SELECTED POLICY ISSUES (June 6, 2018) at 35, https://crsreports.congress.gov/product/pdf/R/R45073.

Thus, attempting to too-finely tailor risk-mitigating prudential standards to precisely match the currently perceived (but possibly erroneous) risk profile of large BHCs is likely to exacerbate the risk and severity of another financial crisis without a persuasive rationale. Instead, the Board should be focused on preserving, if not enhancing, the current enhanced prudential standards to the fullest extent allowed by statute. At the very least, the Board should stay its de-regulatory hand until the current set of prudential standards has been tested through a full business cycle. Certainly, the banks have no basis for complaint, as they continue to reap record-breaking profits and the credit markets are being well-served.

OVERVIEW OF PROPOSAL

The Proposal would create four categories of large BHCs and apply differing levels of enhanced prudential standards based on the Board's assessment of the risk profile of the institutions in each category.

- **Category I:** Firms categorized as globally systemically important banks ("GSIBs") would be subject to Category I standards. With one exception, the current enhanced prudential standards applicable to GSIBs would remain in place. S. 2155 revised the Dodd-Frank Act's requirement that covered BHCs conduct company-run stress tests semi-annually; S. 2155 now mandates that company-run stress tests be conducted "periodically."[6] The Board proposes to implement this change by requiring that GSIBs and other covered BHCs only conduct annual stress tests, as opposed to current regulations, which require covered BHCs to conduct two stress tests a year, an "annual" stress test and a "mid-cycle" stress test.

- **Category II:** Category II standards would apply to BHCs with $700 billion or more in total consolidated assets or $75 billion or more in "cross-jurisdictional activity," that are not also GSIBs. The current enhanced prudential standards that would be applicable to Category II firms would generally remain in place, with two exceptions. First, as with all covered firms, the Board proposes to eliminate the requirement to conduct a mid-cycle company-run stress test. Second, the Board would apply the current limit on net credit exposures to all Category II, and III firms, each of which may have less than $250 billion in assets, depending on risk factors, while currently the limits only apply to non-GSIB firms with assets over $250 billion.

- **Category III:** Category III standards would apply to BHCs with $250 to $700 billion or more in consolidated assets and to BHCs with $100 to $250 billion in consolidated assets that also have at least $75 billion in any of the following: (i) nonbank assets; (ii) weighted short-term wholesale funding; or (iii) off-balance sheet exposures. The current enhanced prudential standards that would be applicable to Category III firms would generally remain in place, with two exceptions. First, Category III firms would not be required to run mid-

6 S. 2155 § 401(a)(5)(B)(II)(bb).

cycle company-run stress tests; and second, they would only be required to conduct and publish the results of company-run stress tests every other year.

- **Category IV:** Category IV standards would apply to BHCs with at least $100 billion in total consolidated assets that do not meet any of the thresholds for Categories I, II or III. The Proposal would make a number of changes to the enhanced prudential standards currently applicable to Category IV firms:

    - Internal liquidity stress testing would be conducted less frequently, quarterly instead of monthly.
    - Collateral positions would only need to be calculated on a monthly, rather than a weekly basis.
    - Supervisory stress tests would be conducted only every other year.
    - Firms would no longer need to conduct or publicly report the results of company-run stress tests.

COMMENTS

At the outset, it bears emphasis that some aspects of the Proposal are positive. For example, the Board proposes to impose enhanced prudential standards on SHLCs that meet the same criteria as covered BHCs.[7] Better Markets fully supports this measure and strongly encourages the Board to adopt it without exception. There is no reason for similarly situated entities with similar risk profiles that represent similar threats to the financial system to be treated differently. Regulatory arbitrage was undoubtedly an issue in the 2007-2009 financial crisis, and the Board should act to ensure that it cannot continue in this context.

In addition, the Board proposes to largely maintain the current enhanced prudential standards for Category I, II, and III firms (with some exceptions discussed below). This is appropriate, and Better Markets supports this aspect of the Proposal. While the Board should consider strengthening these prudential standards, at a bare minimum the Board must resist calls to weaken them, particularly where industry relies on long-debunked arguments about compliance costs choking off credit for consumers. Better Markets also supports the aspect of the Proposal that would apply the net credit exposure limits to Category II and Category III firms regardless of asset size, i.e. to those firms that have less than $250 billion in assets but are Category II or III firms because they trigger one of the other risk-based measures or meet the cross-jurisdictional activity threshold. In the balance of this comment letter, we focus on the aspects of the Proposal that are counterproductive and inadequately supported.

[7] Release at 61,411.

I. THE DE-REGULATORY ELEMENTS OF THE PROPOSAL ARE NEITHER REQUIRED BY, NOR CONSISTENT WITH, SECTION 165 OF THE DODD-FRANK ACT, AS AMENDED BY S. 2155.

A. S. 2155 does not require the Board to institute the proposed changes.

As it relates to the prudential standards relevant to the Proposal, S. 2155 is relatively narrow in scope and leaves the Board with a wide degree of discretion.[8] While S. 2155 substantially altered the prudential regulation framework by raising the threshold for the **required** application of enhanced prudential standards to $250 billion and setting an asset floor at $100 billion below which most enhanced prudential regulations no longer apply, it also left the Board's authority over banks in the $100 to $250 range largely intact. In fact, Congress took pains to expressly confer on the Board the discretion to apply, by order or rule, "any" prudential standard established under Section 165 to "any" bank holding company or bank holding companies with total consolidated assets equal to or greater than $100,000,000,000. The only provisos are that the Board determine that the standards are "appropriate" to mitigating risk and promoting safety and soundness and that the Board consider various risk-related factors relating to the institutions. Clearly, the Board need not, and should not, take S. 2155 as an invitation, much less a requirement, to decrease prudential standards and increase risk.

In addition, further changes to the Board's prudential standards are unnecessary insofar as the current enhanced prudential requirements are already "tailored" to the risk-related attributes of firms and classes of firms, as the Dodd-Frank Act originally intended. The Dodd-Frank Act gave the Board discretion to tailor enhanced prudential standards based on a firm's, or category of firms', "capital structure, riskiness, complexity, financial activities…size, and any other risk-related factors."[9] While S. 2155 removes that discretion in favor of a **requirement** that the Board engage in such tailoring, the Release notes the Board had **already** accepted Congress's invitation to tailor its enhanced prudential regulations according to the enumerated factors before enactment of S. 2155.[10] Thus, while S. 2155 certainly constrains the Board's future ability to establish non-tailored standards, it imposes no requirement to change the current enhanced prudential standards, because they are already tailored based on the enumerated factors.[11] To the extent they apply to BHCs with consolidated assets above $100 billion, the current enhanced prudential standards are already in full compliance with S. 2155.

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8 Pub. L. No. 115-174 § 401(a)(1)(B)(iii).

9 Dodd-Frank Act § 165(a)(2)(A).

10 Release at 61,409. Currently, there are three tiers of BHCs to which different enhanced prudential standards apply: BHCs with assets between $50 billion and $250 billion, non-GSIBs with assets above $250 billion, and GSIBs.

11 See Better Markets, Fact Sheet: Everything You Need to Know About the $50 Billion Threshold (Nov. 28, 2016), https://bettermarkets.com/sites/default/files/50b%20Fact%20Sheet%20Updated%20Long%20Version%2011.28.16_0.pdf.

Nor does S. 2155's tailoring requirement dictate that enhanced prudential standards have to be tailored to be **weaker** for any firm or group of firms with assets above $100 billion. Indeed, several aspects of the Proposal include enhanced standards for savings and loan holding companies, and Better Markets supports these aspects of the Proposal. In finalizing the Proposal, the Board should consider that it can tailor the requirements while also **enhancing** the requirements across the board. For example, S. 2155 changed the required frequency of company-run stress testing from "semi-annual," as in Dodd-Frank, to "periodic." Of course, "periodic" does **not** necessarily mean "less frequently than semi-annual," so the Board need not finalize the proposed elimination of mid-cycle testing.[12] Instead, and in accord with S. 2155, it could and should retain that requirement or even increase the required frequency of company-run stress testing.

B. **The Proposal actually conflicts with the methodology set forth in the Dodd-Frank Act as well as its underlying purposes, and it offers a meaningless impact analysis.**

In establishing or revising standards, the Board still must remember that the Dodd-Frank Act was passed to "promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', [and] to protect the American taxpayer by ending bailouts."[13] These must remain the guiding principles in any implementing regulations: The Board has an overarching duty to protect the stability of the financial system and avert another financial crisis. Indeed, S. 2155 did not alter this these principles. In granting the Board discretion to impose enhanced prudential regulations on BHCs with between $100 and $250 billion in assets, Congress directed the Board to consider whether the application of enhanced prudential standards is necessary to prevent or mitigate risks to U.S. financial stability **or** to promote the safety and soundness of the BHC or BHCs, and to consider capital structure, riskiness, complexity, financial activities, size, "and any other risk-related factors that the Board of Governors deems appropriate."[14] This is consistent with the prudential goals underlying the Dodd-Frank Act.

Unfortunately, in the Proposal, the Board deviates from these requirements and overarching goals. When discussing the risk-enhancing provisions in the Proposal, the Board fails to fully assess any of the statutory factors as required. For example, in explaining the proposed rollbacks to liquidity stress testing and liquidity risk management for Category IV firms, the Board claims that despite these rollbacks, the Proposal would "maintain these firms' risk management and resiliency, which supports their individual safety and soundness and reduces risks to U.S. financial stability."[15] But how? No answer is to be found in the Proposal. And when discussing the proposals to reduce the frequency of supervisory stress tests for Category IV firms and to

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12 Pub. L. No. 115-174 § 401(e).
13 Pub. L. No. 111-203 (2010).
14 Pub. L. No. 115-174 § 401(a)(1)(C)((ii).
15 Release at 61,420-21.

eliminate the requirement to conduct company run stress tests, the Board does not provide any analysis about the impact on systemic risk.

In fact, the Board's "impact analysis" is wholly inadequate. In the Release, the Board offers only general, cursory, and conclusory assessments of the impact of the proposed de-regulatory changes. It simply states that the Board "expects" the proposal to have "minimal effects on the safety and soundness of these firms and U.S. financial stability."[16] In briefly discussing the proposed changes in turn, it merely reiterates these same unsupported claims, averring that the Board expects the changes to have "no material impact" on capital levels and no material "affect" on liquidity buffers or firms' exposure to liquidity risk.[17] Nowhere does the Board provide a basis for these conclusions.

At the same time that the Board fails adequately to evaluate the factors required under S. 2155, it chooses to weigh a variety of factors that have no place in the statute. The Release explains that the Proposal is based on the Board's desire to "update, reduce unnecessary costs associated with, and streamline regulatory requirements," and it repeatedly embraces the goal of reducing "compliance costs."[18] But those factors are conspicuously absent from Section 165 of the Dodd-Frank Act, both as originally adopted and as amended in S. 2155, and they cannot justify the de-regulatory elements of the Proposal.

As demonstrated below, however, the implications of the Proposal on safety and soundness and systemic stability are very troubling. The threat is especially serious because the specific de-regulatory measures in the Proposal are elements of a much larger collection of dangerous de-regulatory steps that the Board and the prudential regulators have already taken or plan to take in the future.

II. THE PROPOSAL WILL UNDERMINE THE STABILITY OF OUR FINANCIAL SYSTEM.

A. Reducing the frequency of stress testing for Category I, II, and III firms would be a mistake, weakening a critical tool for assessing safety and soundness and diminishing transparency.

A particularly troubling aspect of the Proposal is the potential reduction in the frequency and transparency of company-run stress tests for the largest BHCs. Currently, covered firms are required to conduct a mid-cycle company-run stress test in addition to the annual company-run stress test. However, Category I and II firms would only be required to conduct company-run stress tests annually, and Category III firms would only be required to conduct and publish their stress test results every other year.[19] As noted above, this is not a statutorily required change—S.

16 Release at 61,424.
17 Release at 61,425.
18 Release at 61,409; 61,424; 61,425.
19 Release at 61,417, 61,419.

2155 only states that company-run stress tests be conducted "periodically," which would certainly encompass semi-annual or even quarterly tests.

These are dangerous changes to the stress testing regime and they ignore or downplay the actually vital role that stress testing plays not only in identifying potentially unstable firms and heading off safety and soundness problems, but also in enhancing transparency and providing market participants and the public at large with accurate information about the risks that may be accumulating—or waning—in the financial system. In a healthy economy, they give regulators, and the firms themselves, valuable information about firms' ability to weather stress so that corrective action can be taken if needed. During a period of economic stress, when the slightest sign of trouble can lead to a vicious panic cycle that turns the downturn into a crisis, stress tests can provide much needed assurances. This is what happened in May 2009: panicky markets were reassured by the results of the stress tests conducted on the 19 largest U.S. banks.[20] This helped prevent the crisis from devolving into a depression—and stress tests may make the difference in preventing the next economic downturn from becoming another $20 trillion crisis (or worse).

More recent events signal the importance of stress tests. In an effort to reassure jittery equity markets, Treasury Secretary Steve Mnuchin announced that he had reached out to the CEOs of America's six largest banks, who reassured him that they had ample liquidity.[21] However, the attempt backfired, as the day after Mnuchin announced these calls, the Dow Jones Industrial Average dropped 400 points.[22] The market apparently reacted with alarm to the fact that the administration apparently had enough concern about the liquidity of the nation's largest banks to prompt these inquiries. Moreover, the market apparently did not find the supposed reassurances of ample liquidity credible, or at least not credible enough to overcome the concern over the calls having been placed in the first place. Apparently, ad hoc, evidence-free assurances are not convincing; objective, credible, robust stress tests are essential.

However, stress tests are only as useful as they are credible. During periods of economic distress, conditions can change rapidly. A test conducted nearly a year earlier may not reassure markets that a firm can withstand current, deteriorated conditions, much less one conducted nearly two years earlier. The Board proposes to reduce the frequency of stress testing because in "the Board's experience, the mandatory mid-cycle stress test has provided modest risk management benefits and limited incremental information to market participants beyond what the annual company-run stress test provides."

Yet the Board has insufficient experience to assess the necessity of conducting mid-cycle stress tests in addition to the annual stress tests. The current stress testing regime has only been in

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20 MORRIS GOLDSTEIN, BANKING'S FINAL EXAM: STRESS TESTING AND BANK-CAPITAL REFORM (2017) at 2.

21 Damian Paletta and Josh Dawsey, *Treasury Secretary Startles Wall Street with Unusual Pre-Christmas Calls to Top Bank CEOs*, Wash. Post, Dec. 23, 2018, https://www.washingtonpost.com/business/2018/12/23/treasury-secretary-makes-unusual-pre-christmas-call-top-bank-ceos-amid-market-mayhem/?utm_term=.55eddca063ec.

22 Niv Elis, *Markets Plunge Following Mnuchin Outreach to Banks*, The Hill, Dec. 24, 2018, https://thehill.com/policy/finance/422730-markets-plunge-following-mnuchin-outreach-to-banks.

place in a period of economic growth and continued financial stability. Until the economy goes through an actual period of stress, it is impossible to assess the utility of the mid-cycle stress tests. Without actual evidence that mid-cycle stress tests do not provide sufficiently useful information in a time of actual stress, the Board must not change the frequency of the conduct and publication of stress tests for Category I, II, and III firms.

B. <u>The proposal to significantly weaken enhanced prudential standards for Category IV firms could be disastrous.</u>

The Board proposes to significantly weaken the enhanced prudential standards for Category IV firms—those firms with $100 to $250 billion in assets that are not Category I, II, or III firms. The changes the Board proposes would reduce the frequency of internal liquidity stress testing from monthly to quarterly, reduce the frequency of the calculation of collateral positions from weekly to monthly, reduce the frequency of supervisory stress testing from annual to biennial, and **completely eliminate** the requirement to conduct and publish the results of company-run stress tests.[23]

These reductions in enhanced prudential standards are particularly unwise since, as noted above, the current requirements have yet to be tested over the course of a full business cycle. If the Board eliminates or reduces them for some of the largest BHCs in the country, it will be tempting fate. In the next period of significant stress, regulators and the public will be significantly hampered in understanding the liquidity and overall health of these firms.

Moreover, these are not small or insignificant firms. Recall that the smallest among this class of banks is over twice the size of the $50 billion dollar banks that automatically required enhanced prudential regulation under the Dodd-Frank Act as originally enacted. Indeed, a BHC with $100 billion in assets is a larger institution than over 99% of the BHCs in the country. The 25 BHCs that, as of September 30, 2018, have between $100 and $250 billion in assets have a total of approximately $3.7 trillion in assets.[24] And while some of them can be considered "regional" in nature, their failure would have huge implications for the entire financial system. Moreover, it is unlikely that any single one of these large firms would fail in isolation.

The disparate treatment of the Category IV firms poses yet another problem. Under the Proposal, the treatment of Category I, II, and III firms is substantially similar, but the standards for Category IV firms are **significantly** weaker than for the other three categories.[25] In a period of economic stress, markets will perceive that there is significantly more information available about the present health of the Category I, II, and III firms than the Category IV firms, and will also know that the Category I, II, and III firms were subject to more stringent liquidity and stress testing standards than Category IV firms. In a stressed environment, that could lead to a widespread loss of confidence in the stability of this entire class of banks, 25 of them representing $3.7 trillion in

[23] Release at 61,420.
[24] https://www.ffiec.gov/nicpubweb/nicweb/HCSGreaterThan10B.aspx
[25] This is especially the case when considering the impact of the Joint Proposal.

combined assets. To avoid this scenario, the Board must significantly strengthen the proposed Category IV standards so that they more closely match the Category I-III standards.

C. **The likely impact of the Proposal must be evaluated in light of the broad deregulatory movement now underway.**

The Board must consider the impact of the Proposal not only in isolation but also in light of the deregulatory environment that currently prevails. The Proposal is part of a long series of statutory and regulatory measures that will collectively and substantially weaken the entire framework of reforms adopted in the Dodd-Frank Act, thus increasing the likelihood, proximity, and severity of another devastating financial crisis. For example, the Board, OCC, and FDIC have recently proposed changes to the thresholds for application of certain capital and liquidity requirements, using the same four categories of banks set forth in the Proposal.[26] In addition, the Board and the other prudential regulators have previously issued numerous de-regulatory proposals, including proposed changes to the current requirements governing bank capital, capital planning, and stress testing,[27] as well as a proposal to modify the enhanced supplementary leverage ratio—a release deemed so dangerous and unnecessary that the FDIC refused to join in its issuance.[28] And yet additional de-regulatory measures are forthcoming. As the Board notes in the Release, it intends to issue proposals that would change its capital planning rule and the applicability of resolution planning requirements.[29]

Because the Proposal would operate in conjunction with these other deregulatory initiatives, it would pose a comparatively greater threat to the regulatory framework that helps protect and preserve the stability of our financial system. Just as the benefits of a single new regulation must be evaluated not only in isolation but also in terms of the larger benefits of the entire framework of which it is a part, the threats and risks of a single de-regulatory measure must also be viewed in terms of the overall impact of a collection or series of related deregulatory measures. This deregulatory context intensifies the threat of any single proposal that seeks to unwind, rollback, or dilute the measures that were carefully put in place to prevent and mitigate any future financial crisis.

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26 Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 83 Fed. Reg. 61,407 (Nov. 29, 2018).

27 Amendments to the Regulatory Capital, Capital Plan, and Stress Test Rules, 83 Fed. Reg. 18,159 (Apr. 25, 2018). Better Markets also provided details on the dangerous deregulatory environment in its response to this proposal. *See* Letter from Dennis M. Kelleher, President and CEO, Better Markets (Jun. 25, 2018), https://bettermarkets.com/sites/default/files/Better%20Markets%20CL%20to%20Fed%20-%20Cap%20buffer%20and%20stress%20testing%206-25-18.pdf.

28 Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for U.S. Global Systemically Important Bank Holding Companies and Certain of Their Subsidiary Insured Depository Institutions; Total Loss Absorbing Capacity Requirements for U.S. Global Systemically Important Bank Holding Companies. 83 Fed. Reg. 17316 (Apr. 19, 2018).

29 Release at 61,410.

III. OTHER POLICY CONSIDERATIONS—INCLUDING THE SUCCESS OF THE CURRENT REGULATORY FRAMEWORK AND THE ROBUST HEALTH OF THE CREDIT MARKETS—WEIGH HEAVILY IN FAVOR OF MAINTAINING OR ENHANCING PRUDENTIAL STANDARDS.

A. The current framework has substantially increased financial stability.

The Release appropriately acknowledges the extraordinary success of the current standards:

> Post-crisis financial regulations have resulted in substantial gains in resiliency for individual firms and for the financial system as a whole. Notable advances include higher amounts of better quality capital, a robust framework for assessing the capital adequacy of banking organizations under stressful financial and economic conditions, higher buffers of liquid assets and more stable funding profiles, and improvements in resolvability. Firms have also made significant improvements in independent risk identification and management, data infrastructure, and controls. **These improvements have helped to build a more resilient financial system that is better positioned to provide American consumers, businesses, and communities access to the credit they need even under challenging economic conditions.**[30]

In other words, the Board acknowledges in the Release that the current regime is working exactly as intended by leading to a safer, more resilient financial system that is able to serve the real economy. And underscoring the success of the current regulatory regime, 2018 was the first year since 2006 and only the third year in history in which the U.S. did not have a **single bank failure.**[31]

Further, the true test of the current regulatory framework will not be complete until our economy has completed a business cycle. In short, in the face of ample evidence of the success of the current standards, and before the conclusion of a full business cycle, any proposal to weaken them without persuasive, credible evidence that such action will not unnecessarily increase the risk and severity of another financial crisis would be an abuse of the Board's discretion under S. 2155.

B. Large financial institutions require no regulatory relief, as banks are thriving and credit markets are robust.

For years, the industry has been crying wolf about the supposed burdens of the Dodd-Frank Act and implementing regulations, continuing a long tradition of baselessly warning that regulation

30 Release at 61,409 (emphasis added).

31 Hugh Son, *For the First Time Since 2006, Not a Single U.S. Bank Failed Last Year*, CNBC (Jan. 10, 2019), https://www.cnbc.com/2019/01/09/for-the-first-time-since-2006-not-a-single-us-bank-failed-last-year.html?__source=sharebar%7Ctwitter&par=sharebar.

will prohibitively increase costs, stifle markets, and suppress economic growth.[32] This pattern has continued with every rule that has been implemented under the Dodd-Frank Act, which has been met with warnings that the implementation of robust, risk-mitigating rules will be too burdensome for financial firms and ultimately detrimental for American investors and consumers.

However, only in the evidence-free world of industry comment letters and other biased industry or industry-adjacent sources does the responsible financial regulation mandated by the Dodd-Frank Act spell doom for the financial industry and the consumers and businesses who depend on it. In reality, as the Board notes in the Release, post-crisis financial regulations "have resulted in substantial gains in resiliency for individual firms and for the financial system as a whole"[33] at the same time that financial companies have reaped enormous profits and lending has increased rapidly.[34] As the American Banker, a trade publication, concluded, while some have argued that the Dodd-Frank Act has increased the cost of consumer lending and cut off access to credit,

> the available data indicates otherwise. Consumer credit has roared back in the six years since Dodd-Frank, with a 46% jump in outstanding consumer credit to $3.8 trillion. . . . [T]he fact remains that mortgage, auto and credit card lending have all gone up since 2010. [Mortgage] lending standards are as loose as they've been since the downturn. . . . Auto lending has been on a tear since the financial crisis . . . . Credit card lending has returned to pre-crisis levels with total lending hitting an all-time high of $996 billion. . . .[35]

In response to the Proposal, affected industry participants will surely implore the Board to abandon those proposed provisions that would strengthen the current regime and to embrace those proposals that would weaken it along with even more deregulatory changes. The Board should reject these entreaties. The post-Great Depression financial reforms, adopted amidst industry warnings about potentially disastrous consequences, instead accompanied a thriving financial system for decades, much like the current robust regulatory regime has accompanied a sharp upturn in lending activity and financial company profits. Meanwhile, the deregulatory movement that began in the 1980's led to a $20 trillion crisis less than a decade after its completion.

Between robust regulation and weakened regulation, it is clear that the former leads to financial stability and broad economic prosperity while the latter leads to economic devastation, not only for Americans but also for the very banks that seek regulatory relief. In crafting final rules, the Board should trust the facts and discount the industry's complaints and predictions. The

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32 Marcus Baram, *The Bankers Who Cried Wolf: Wall Street's History Of* Hyperbole About Regulation, HUFFPOST (June 21, 2011), https://www.huffingtonpost.com/2011/06/21/wall-street-history-hyperbole-regulation_n_881775.html.

33 Release at 61,409.

34 Kate Berry, Four Myths in the Battle over Dodd-Frank, AMERICAN BANKER, (Mar. 10, 2017), https://www.americanbanker.com/news/four-myths-in-the-battle-over-dodd-frank.

35 Id.

wolf that forever lurks beyond the door is not prudential regulation; it is the reckless behavior of the large Wall Street banks hungry for profit at the expense of the American people.

CONCLUSION

We hope you find these comments helpful.

Sincerely,

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