BETTER MARKETS

January 22, 2019

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
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Washington, DC 20219

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

Robert E. Feldman
Executive Secretary
ATTN: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, OCC Docket ID OCC-2018-00307; Board Docket No. R-1628 and RIN 7100-AF20

Dear Ladies and Gentlemen:

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"), the Office of the Comptroller of the Currency ("OCC"), and

[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. 66,023 (Dec. 21, 2018).

the Federal Deposit Insurance Corporation ("FDIC") (the Board, the OCC, and the FDIC collectively, the "Agencies"), regarding revisions to capital and liquidity requirements for large banking organizations.

Unfortunately, the Proposal is a step in the wrong direction as it includes 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.

INTRODUCTION AND SUMMARY

The stated goals of the Proposal are "to improve upon the simplicity, transparency, and efficiency of the regime."[3] However, the actual impact of the Proposal will be to 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 banking organizations. 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 justifiable. 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 Agencies' exercise of discretion. The Agencies' 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 the Agencies can provide credible evidence that weakening capital and liquidity requirements will not increase the risk of another financial crisis, and is otherwise appropriate and necessary, the Agencies should refrain from diluting the current requirements for large banks, especially those with $100 to $250 billion in assets.

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3 Release at 66,027. The Proposal is also intended to be consistent with a separate proposal by the Board tailoring enhanced prudential standards as required by the Economic Growth, Regulatory Relief and Consumer Protection Act, Pub. L. No. 115-174 (2018). See Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies, 83 Fed. Reg. 61,408, 61,409 (Nov. 29, 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 Agencies have 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.

As shown by this history, 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

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.

standards serve to assure markets that large financial companies are healthy enough to weather a period of stress.

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 Agencies 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 Agencies should stay their de-regulatory hands 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 AND ITS "IMPACT ANALYSIS"

The Four Categories and the Proposed Changes in Regulatory Requirements

The Proposal would create four categories of large banking organizations and apply differing levels of capital and liquidity requirements based on the Agencies' assessment of the risk profile of institutions in each category.

- **Category I:** Firms categorized as globally systemically important banks ("GSIBs") would be subject to Category I standards. Under the Proposal, the current enhanced prudential standards applicable to GSIBs would remain in place. Specifically, Category I firms would still be required to calculate risk-based capital ratios under both standardized and advanced approaches and would still be subject to the U.S. leverage ratio, the enhanced supplementary leverage ratio, the GSIB surcharge, the requirement to recognize most elements of accumulated other comprehensive income ("AOCI") in regulatory capital, and the countercyclical capital buffer, if applicable.

- **Category II:** Category II standards would apply to banking organizations 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 requirements applicable to these organizations would continue to apply, including the full liquidity coverage ratio ("LCR"), the full proposed net stable funding ratio ("NSFR"), advanced approaches capital requirements, the supplementary leverage ratio, recognition of most AOCI in regulatory capital, and the countercyclical capital buffer, if applicable.

- **Category III:** Category III standards would apply to banking organizations with $250 to $700 billion in consolidated assets and to firms 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. Under the

Proposal, firms in Category III would no longer be subject to advanced approaches capital requirements or the recognition of most AOCI in regulatory capital. In addition, Category III firms that have less than $75 billion in weighted short-term wholesale funding would only be subject to less stringent or "reduced" LCR and NSFR requirements. Category III firms would still be subject to the U.S. leverage ratio, the supplementary leverage ratio, and the countercyclical capital buffer, if applicable.

- **Category IV:** Category IV standards would apply to banking organizations 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 essentially treat these firms the same as banking organizations with under $100 billion in assets. Specifically, the countercyclical capital buffer and the supplementary leverage ratio applicable to Category III firms would not apply to Category IV firms. Moreover, Category IV firms would not be subject to any LCR or NSFR requirements.

The "Impact Analysis"

The Release sets forth the results of the Agencies' impact analysis. For that exercise, the Agencies took "into account the potential benefits in the form of increased net interest margins from holding higher yielding assets, reduced compliance costs, and increased regulatory flexibility, and potential costs related to increased risk to holding companies during a period of economic stress."[6] Overall, and primarily as a result of changes to requirements for Category III and IV firms, the impact analysis estimates that:

- The Proposal would result in an approximately $8 billion capital reduction for Category III and IV firms;

- The Proposal would result in Category III and IV firms reducing high quality liquid assets by nearly $80 billion, a 2.5% aggregate reduction among holding companies with more than $100 billion in assets; and

- The Proposal would "modestly increase" the net interest margin at affected holding companies and "moderately increase the likelihood that these holding companies could experience liquidity pressure during times of stress."[7]

6 Release at 66,038.
7 Release at 66,038-39.

COMMENTS

I. THE AGENCIES HAVE FAILED TO JUSTIFY THEIR PROPOSAL.

The Agencies wholly fail to justify the proposals to reduce capital and liquidity requirements for some of the largest banks in the country. Why are the Agencies proposing to weaken these requirements? The Release offers the cursory explanation that the Proposal is part of their continuing effort "to evaluate the requirements of these measures to ensure that they meet their objectives in a manner that minimizes unintended consequences and aligns with banking organizations' risk profiles" in accordance with "the agencies' existing practice of tailoring capital and liquidity requirements based on size, complexity, and overall risk profile of banking organizations."[8] But the Agencies do not actually conduct this analysis. For example, what are the "unintended consequences" that have resulted from the current capital requirements? And how would the Proposal minimize those unintended consequences? The Agencies do not say.

Moreover, how do the proposed requirements align "with banking organizations' risk profiles?" The lack of an answer to this question is a problem throughout the Proposal, particularly in the discussion of the requirements applicable to Category III and Category IV firms. For example, why should Category III firms not be required to apply advanced approaches capital requirements? The answer offered in the Release is that the "models for applying these requirements are costly to build and maintain, and the agencies do not expect that the removal of these requirements would materially change the amount of capital that these banking organizations would be required to maintain."[9]

This is a plainly insufficient explanation. In establishing or revising standards, the Agencies 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."[10] These must remain the guiding principles in any implementing regulations: The Agencies have an overarching duty to protect the stability of the financial system and avert another financial crisis. Dodd-Frank directs that, when tailoring enhanced prudential standards for firms or groups of firms, the Agencies must "[take] into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate."[11]

Not included in these factors are reducing the burden on industry or greater "efficiency" for firms, yet the Proposal cites these concerns as justifications for deregulation while failing to

8 Release at 66,027.
9 Release at 66,035.
10 Pub. L. No. 111-203 (2010).
11 12 U.S.C. § 5365. This requirement was not altered by S. 2155.

consider the statutorily required factors.[12] From a policy perspective, exempting large banking organizations, which are currently extraordinarily profitable, from having to build "costly" models is not a reason to increase risk to the financial system; from a legal perspective, doing so is simply impermissible. Nor does the mere "expectation" of the Agencies, without support, constitute a sufficient basis for the proposed rule. At the very least, the Agencies must provide an evidence-based, credible analysis that supports their expectation that the Proposal will not "materially change the amount of capital" of the affected banking organizations. Without this, the Agencies are simply proposing to allow banking organizations to avoid costs with only the barest of speculation that doing so will not end up threatening safety and soundness financial stability and costing taxpayers dearly in the future.

This omission of meaningful analysis is especially difficult to justify in light of the fact that the current requirements have **already been tailored** with bank size and other risk factors taken into account. The regulations were implemented with the assumption that banks with less than $250 billion in assets are less risky than GSIBs and non-GSIBs with more than $250 billion in assets.[13] It is not enough to simply point out that Category IV firms are less risky than Category III or Category II or Category I firms and that they therefore should be subject to less stringent requirements. This purely relativistic analysis simply points out the obvious; it does not explain how or why the posited new standard is in fact appropriate for a bank with the Category IV characteristics. In order to complete the analysis, the Agencies must **also** explain why the current requirements applicable to Category IV firms do not align with their risk profiles, and why eliminating most of these requirements would better align with their risk profiles.

Moreover, it is unlikely that the Agencies could adequately justify the proposed weakened requirements, for a variety of reasons. Among them is the fact that the existing standards have not been fully tested. As leading policy-makers have recently confirmed, post-crisis reforms under the Dodd-Frank Act relating to capital and liquidity should not be re-visited until they have been tested through an entire business cycle. As Board Governor Brainard has explained:

> I support efforts to identify improvements that make regulations less burdensome. But it is vital to be prudent regarding any material changes to the core capital and liquidity framework, and not lose sight of the need to safeguard financial resilience through the cycle. Prudence would argue for waiting until we have tested how the new framework performs through a full cycle before we make judgments about its

12 Release at 66,027 (explaining the Proposal as an effort to assess "the costs and benefits of regulation as well as exploring alternative approaches that achieve regulatory objectives but improve upon the simplicity, transparency, and efficiency of the regime"; Release at 66,035 (justifying proposal to not apply advanced approaches capital requirements to Category III firms because models are "costly to build and maintain").

13 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.

> performance. At this point in the cycle, it is premature to revisit the calibration of core capital and liquidity requirements for the large banking institutions.[14]

Of course, we have not yet experienced a complete business cycle since the crisis, and it is therefore premature to be modifying the capital requirements as proposed in the Release.

Finally, even the meager analysis offered in the Release affirmatively demonstrates that the Proposal is, on its face, unjustifiable. For example, as noted above, the Agencies' impact analysis estimates that the Proposal would "modestly increase" the net interest margin at affected holding companies and "moderately increase the likelihood that these holding companies could experience liquidity pressure during times of stress."[15] In other words, for a modest increase in benefit to the executives and shareholders of certain large bank holding companies, the Proposal would modestly increase the risk to the public of either a large bank failure due to liquidity pressures (which could spread to the larger financial system), or a taxpayer-funded bank bailout. This is an unacceptable tradeoff—one of the main purposes of Dodd-Frank was to force large banks to internalize the risks of a financial crisis to prevent ordinary Americans from yet again having to pay tens of trillions of dollars for a crisis they did not create. By its own estimation, the Proposal flies in the face of the Dodd-Frank Act.

Under all of these circumstances, a robust, factual, detailed, objective, independently confirmed, and data-driven empirical analysis supporting the changes in the Proposal is all the more important. Without such a basis, the Proposal lacks the most rudimentary foundation. That is not only bad policy but also arbitrary and capricious rulemaking.[16]

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14 See Lael Brainard, Member of the Board of Governors of the Federal Reserve, Remarks at the Global Finance Forum, Safeguarding Financial Resiliencies Through the Cycle, at 7, 10 (Apr. 19, 2018) (emphasis added), available at https://www.federalreserve.gov/newsevents/speech/files/brainard20180419a.pdf.

15 Release at 66,039.

16 Under the Administrative Procedure Act, an agency rule is arbitrary and capricious if the agency "has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

II. THE PROPOSED FRAMEWORK WOULD POSE SERIOUS DANGERS TO CATEGORY III AND IV FIRMS IN TIMES OF ECONOMIC STRESS, ESPECIALLY IN LIGHT OF MANY OTHER PROPOSED DE-REGULATORY MEASURES, THREATENING SAFETY AND SOUNDNESS AND SYSTEMIC STABILITY.

A. The Proposal would weaken important requirements applicable to large banks.

The Agencies propose to significantly weaken the enhanced prudential standards for Category III and IV firms—those firms with $100 billion to $700 billion in assets that do not meet the asset-based or risk-based thresholds to be Category I or II firms. Specifically, as noted above, Category III firms would see their enhanced capital and liquidity requirements significantly reduced; Category IV firms would see those requirements practically eliminated.

Needless to say, these are not small community banks, but large institutions. As Governor Brainard notes in her dissent, "[d]uring the crisis, there were two large domestic banking institutions in the $100 to $250 billion size range whose liquidity stress necessitated distress acquisitions."[17] She also points out there is little doubt "that the liquidity insolvency of a large banking institution with $250 to $700 billion in assets would pose substantial risk of loss to the deposit insurance fund or that the need to monetize a large amount of assets associated with a balance sheet of that size in a time of market stress would generate large spillovers[.]"[18] Indeed, the 33 firms with $100 to $700 billion in assets (as of September 30, 2018) have a combined $6.5 **trillion** in assets.[19] Individually, stress at, or the failure of, any one of these firms could have a significant impact on the financial system and the entire economy. Unfortunately, the approach of the Proposal increases the likelihood that, in a time of economic stress, the market could lose confidence in many if not all Category III and IV firms.

One key consideration in setting appropriate capital requirements is that those requirements must be credible. Capital requirements must be set so that banks are considered adequately capitalized by regulatory standards and market standards, particularly in times of stress. If panicky markets perceive the capital requirements applicable to banks, or to a certain subset of banks, to be inadequate in light of economic conditions, even banks that are actually healthy can be subject to vicious panic cycles that endanger that health.[20] This is a potential risk of attempting to overly

17 Lael Brainard, Member of the Board of Governors of the Federal Reserve, Statement on Proposals to Modify Enhanced Prudential Standards for Large Banking Organizations, https://www.federalreserve.gov/newsevents/pressreleases/brainard-statement-20181031.htm.

18 Id.

19 https://www.ffiec.gov/nicpubweb/nicweb/hcsgreaterthan10b.aspx.

20 Indeed, as Better Markets has demonstrated, empirical evidence measuring the devastating impact of the crisis on just four banks (Washington Mutual, Wachovia, Citigroup, and Bank of America) shows that "banks require equity well in excess of 10 percent of their tangible assets to survive financial crises of the severity" witnessed in 2008. See Letter from Dennis M. Kelleher, President and CEO, Better Markets (Jun. 25, 2018),

tailor capital requirements, an approach that may create a perception that banks subject to less stringent capital requirements are less likely to withstand a period of stress.

For this reason, the Proposal could severely endanger Category III and Category IV firms. Among the largest and potentially riskiest banks in the country, Category III and Category IV firms will have significantly weaker capital requirements than Category I and Category II banks, and thus may be perceived as being significantly less likely to survive a period of stress. Capital requirements are already tailored; at the very least, before further weakening requirements for a significant and systemically important subset of the largest banking organizations, the Agencies must wait until there is a period of actual economic stress to determine whether the current approach to tailoring adequately protects the safety and soundness of banks and the financial system. Further widening the gulf between capital requirements for subsets of the largest banks in America is a dangerous approach.

B. The Proposal will act in concert with other de-regulatory proposals, magnifying its dangerous impact.

The Agencies 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 has recently proposed changes to the thresholds for application of certain stress testing requirements, using the same four categories of banks set forth in the Proposal.[21] 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,[22] 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 its issuance.[23] And yet additional de-regulatory measures are forthcoming. The Board, in its separate release, states that it intends to

https://bettermarkets.com/sites/default/files/Better%20Markets%20CL%20to%20OCC%20and%20Fed%20eSLR%206-25-18.pdf.

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

22 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 (June 25, 2018), https://bettermarkets.com/sites/default/files/Better%20Markets%20CL%20to%20Fed%20-%20Cap%20buffer%20and%20stress%20testing%206-25-18.pdf.

23 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. 17,316 (Apr. 19, 2018).

issue proposals that would change its capital planning rule and the applicability of resolution planning requirements.[24]

Because the Proposal would operate in conjunction with those 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 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.

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.

Any proposed changes to the current capital and stress testing framework must be evaluated with the critical role of those regulatory reforms foremost in mind. While this Release provides an understated description of the enormous importance of bank resiliency in preserving the stability of the financial sector and the key role of capital requirements in achieving that goal,[25] another recent proposal by the OCC and the Board describes what is at stake more fully:

> The resiliency of large financial institutions is critical to the stability of the financial sector. As shown in the 2007-2008 financial crisis, problems at large financial institutions can lead to significant market disruptions, spread rapidly throughout the financial system, and cause a credit crunch, worsening economic downturns. To be resilient, a financial institution must maintain sufficient levels of capital to support the risks associated with its exposures and activities.[26]

Similarly, the Board's related proposal on enhanced prudential standards explains how important and successful these post-crisis financial reforms have been:

> 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

24 83 Fed. Reg. 61,407, 61,410.

25 Release at 66,027 ("Post-crisis regulatory reforms, which include the agencies' capital and liquidity standards, have resulted in significant enhancements to financial stability and the safety and soundness

26 Amendments to the Regulatory Capital, Capital Plan, and Stress Test Rules, 83 Fed. Reg. 18160 (Apr. 25, 2018).

> 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.**[27]

Indeed, the success of the current regime is underscored by the fact that 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.[28] In other words, under the current regulatory regime, banks are profitable, safe, and serving the real economy. Given that, there is no legitimate reason for the Agencies to be considering weakening the regime.

B. Banks require no relief from any regulatory requirements, as they continue to thrive and the credit markets remain robust.

For years, 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 will prohibitively increase costs, stifle markets, and suppress economic growth.[29] 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, outside the evidence-free world of industry comment letters and other biased industry or industry-adjacent sources, the evidence is clear that responsible financial regulation mandated by the Dodd-Frank Act has **not** spelled doom for the financial industry and the consumers and businesses who depend on it. As Governor Brainard explained in dissenting from the Proposal, currently "large banks have comfortably achieved the required buffers and are providing ample credit to the

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27 Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies, 83 Fed. Reg. 61,408, 61,409 (Nov. 29, 2018) (emphasis added).

28 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.

29 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.

economy and enjoying **robust profitability**."[30] The American Banker, a trade publication, has also reviewed the evidence and concluded that, while some assert 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. . . .[31]

In other words, there is widespread agreement that not only is the current robust regulatory regime working exactly as intended for the American public by leading to a safer, more resilient system that is able to serve the real economy, **but it has done so while allowing large banks to turn huge profits.**

Despite the clear evidence to the contrary, however, in response to the Proposal, affected industry participants will surely implore the Agencies to embrace those proposals that would weaken regulations, and will likely suggest even more deregulatory changes. The Agencies 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 as 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 Agencies should trust the facts and discount the industry's complaints and predictions. The 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.

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30 Lael Brainard, Member of the Board of Governors of the Federal Reserve, Statement on Proposals to Modify Enhanced Prudential Standards for Large Banking Organizations (Oct. 31, 2018) (emphasis added), https://www.federalreserve.gov/newsevents/pressreleases/brainard-statement-20181031.htm.

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

CONCLUSION

We hope you find these comments helpful.

Sincerely,

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