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April 30, 2013

Comments on FRB's Consultative Documents: "Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies"

Japanese Bankers Association

We would like to express our gratitude for this opportunity to provide our comments on the proposed rule published by the Board of Governors of the Federal Reserve System (the "Board") with regard to the enhanced prudential standards and early remediation requirements for foreign banking organizations and foreign nonbank financial companies.

We respectfully anticipate the following comments contributing to further work by the U.S. regulators in finalizing the rule.

Preamble

This rule should be developed in such a manner to eliminate inconsistency and ensure harmonization with other international regulatory frameworks such as systemically important financial institutions (SIFIs) requirements and the Basel Ⅲ regulations, with the common aim of preventing recurrence of financial crises. If this rule is to be implemented in the U.S., it may trigger other jurisdictions to introduce similar rules to regulate foreign banking organizations (FBOs), resulting in differing regulations on capital and other areas across jurisdictions. This would undermine the significance of internationally-agreed rules, as well as increase costs or restrict business activities of internationally active banks.

Taking the proposed early remediation requirements for example, some triggers are established on a global consolidated basis for FBOs, and in particular, Level 2 and Level 3 triggers require higher minimum capital ratios or leverage ratios than the minimum thresholds set forth by the Basel Ⅲ framework. If a foreign bank breaches a trigger set in this rule, such a breach may be perceived as a sign that this foreign bank facing a crisis throughout its organization. This may lead to a situation where the U.S rule may substantially supersede internationally-agreed upon rules. We therefore respectfully request the Board to give careful consideration to consistency with international and jurisdictional regulations to avoid the extraterritorial application of the U.S. rule.

Further, with respect to the intermediate holding company ("IHC") requirement, requiring all covered entities to be structured in a single form should be considered as an inappropriate regulation, lacking due consideration to the diversity of banks' business models and risk profiles. When applying requirements to FBOs, the Board should give due respect to home country regulations and supervision and not treat the U.S. operations of FBOs as stand-alone businesses and force them to comply with the same rules as U.S. banks.

Moreover, applying the proposed liquidity and other requirements to FBOs which do not have retail deposit base in the U.S. could lead to unlevel playing field for FBOs and U.S. banks, as further discussed hereafter.

Given the breadth of covered areas and scope as discussed above, the proposed rule will cause a significant impact on FBOs' business, organizational structure, earnings among other aspects. We therefore respectfully request the Board to consider our comments below and carefully examine this rule in order to ensure that the U.S. domestic regulatory reform will not undermine the effectiveness of internationally-agreed rules nor lead to a fragmentation of regulations that may result in instability of the global financial system.

Consistency with international regulatory regimes

If the measurements for, the definition of liquid assets, reporting requirements and others with regard to risk-based capital, liquidity, single-counterparty credit limit and other requirements under the proposed rule differ from those under internationally-agreed rules established by the Basel Committee on Banking Supervision ("BCBS") or other regulatory bodies, the significance of such internationally-agreed rules may be impaired. Moreover, covered banks would need to develop the U.S. specific structure of management system including restructuring of financial strategies and IT system developments. In order to avoid such duplications, the proposed rule and its implementation timeframe should be in line with the existing global regulatory frameworks (e.g. BCBS).

"Equal footing' issue in the competition between U.S. banks and FBOs

U.S. banks will be able to comply with the proposed capital and leverage requirements including those on broker-dealers, using ample capital base of their bank holding company,. FBOs, on the other hand, would need to allocate additional capital to their broker-dealers in the U.S., obviously thereby creating an unlevel playing field from a cost perspective.

Further, U.S. banks can secure required liquidity assets from their domestic retail deposits. FBOs, however, would have to independently secure liquidity assets in the United States, being unable to utilize liquidity pools funded by retail deposits held in their home countries. Although the proposed rule states that it does not intend to increase the FBO's overall consolidated liquidity requirements, the proposal, in reality, may well increase the required amount of liquidity assets because FBOs are not able to utilize ample liquidity in their home countries to secure liquidity assets for their U.S. operations.

International collaboration for resolution regimes

It is also our concern that this proposal may diverge from international cooperation in the SIFIs resolution at the Financial Stability Board ("FSB") level. Specifically, this proposal may trigger other jurisdictions to introduce similar rules to regulate FBOs, resulting in multiple liquid assets/capital requirements across jurisdictions, which in turn may give rise to a significant increase in cost for internationally active banks.

FBOs are subject to their home countries' prudential standards based on Basel III on a group-wide basis. Assuming bilateral dialogue between U.S. and regulators from each country, a framework to minimize imposing double regulation, such as "Substituted Compliance", should be discussed.

While the joint paper by the Federal Deposit Insurance Corporation ("FDIC") and the Bank of England ("BOE") proposes that the home authorities have the responsibility to undertake the resolution of FBOs, this proposed rule requires FBOs to separately hold capital/liquidity assets in the U.S. It is, therefore, unclear how the Board intends to make the proposed rule consistent with the cross-border collaborative initiatives for the resolution regimes.

Relationship between U.S. operations and home country in terms of liquidity

When Japanese banks faced the liquidity crisis in their U.S. branches in the wake of the Lehman Shock, they responded effectively by providing liquidity support from the head office. To our knowledge, at that time, home authorities did not impose any constraints on such liquidity support to U.S. branches. The "one-size-fits-all" type of proposed rules, including the formation of intermediate holding company and enhanced requirements for branches under the assumption of extreme scenarios as exemplified in the proposal, will place an excessive burden on FBOs. We recommended the Board to consider multiple approaches in accordance with parent's financial soundness, the degree of collaboration between U.S. regulators and home country regulators and other factors.

The liquidity rules established by the U.K.'s Financial Services Authority, which the proposed rule refers to, permit exemptions according to the parent's soundness and do not require all FBOs to maintain liquidity assets in the United Kingdom.

Impact on the liquidity of U.S. government bonds

Some Japanese banks with large scale operations in the U.S. may have large broker-dealers in asset size among their subsidiaries that will be held under an IHC. One of the reasons for such broker-dealers' asset size is that they support the absorption of the U.S. government bonds as a primary dealer and serve as a liquidity provider for investors through repos. In addition, they also provide liquidity through repos to Japanese investors who purchase U.S. government bonds. The IHC requirements as well as leverage ratio and other requirements applied to such an IHC are likely to reduce the volume of such repo transactions. That could have an adverse effect on the absorption of U.S. government bonds, as well.

Section 165 of the Dodd-Frank Act

The section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") specifies that the Board shall "take into account the extent to which the foreign financial 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 application of enhanced prudential standards to FBOs. If a foreign bank is subject to internationally-agreed capital and/or liquidity requirements on a consolidated basis in its home country, imposing the proposed rule may result in regulatory duplication. Therefore, in order to avoid an unnecessary increase in costs associated with regulatory compliance, similar regulations should not be applied to FBOs in the U.S. if the comparable regulations exist in the home country,

Early remediation

While the direct impact of breaching a trigger is limited within the U.S., some triggers are applied on a global consolidated basis, which may indirectly result in extraterritorial application of the proposed rule. In particular, Level 2 and Level 3 triggers require higher minimum capital ratios or leverage ratios on a consolidated basis than the minimum thresholds set forth in the Basel Ⅲ Accord. This will undermine the raison d'être of the globally-agreed capital conservation buffer rules and lead to a quasi-mandatory application of the U.S. rule. Further, although stress triggers could call for intervention by the regulators to the bank management and cause market skepticism on the bank's soundness, authorities are afforded too broad a discretion when a trigger event occurs. As such, the early remediation triggers should be reconsidered.

Ⅱ. Overview of the Proposal

(Specific comments)

Q4: What challenges are associated with the proposed phase-in schedule?

Taking into account the efforts required such as forming an IHC, reorganization including capital structure optimization, governance tightening and IT systems development, we are concerned that the proposed effective date (i.e. July 1, 2015) is unlikely to allow enough lead time to meet the proposed requirements. We therefore request the Board to consider either putting off the effective date or the phase-in implementation.

Q5: What other considerations should the Board address in developing any phase-in of the proposed requirements?

We respectfully request the Board to ensure consistency with the implementation timeframe of other international regulatory frameworks, as noted in the "Preamble".

Ⅲ. Requirement to Form a U.S. Intermediate Holding Company

(General comments)

Please specify the grounds for setting the $10 billion threshold given the potential impact on the U.S. financial markets.

We respectfully request the Board to further assess the appropriateness of this threshold and consider exemptions such as allowing FBOs to exclude the amount of low risk assets including repo transactions backed by U.S. government bonds and other highly liquid securities from asset size calculation.

(Specific comments)

Q9: Is the definition of U.S. subsidiary appropriate for purposes of determining which entities

should be held under the U.S. IHC?

It is our concern that a non-U.S. subsidiary of a U.S. subsidiary of FBO will be held under the IHC and thereby such a non-U.S. subsidiary (i.e. a sub-subsidiary of a foreign bank) becomes subject to both U.S. and home country regulations. Overseas subsidiaries of U.S. subsidiaries (i.e. a sub-subsidiary of FBO) consolidated into the IHC should be excluded from the application scope of U.S. regulations, while remaining under the IHC.

Q10 : Should the Board consider exempting any other categories of companies from the requirement to be held under the U.S. IHC, such as controlling investments in U.S. subsidiaries made by foreign investment vehicles that make a majority of their investments outside of the United States, and if so, which categories of companies?

Any subsidiary meeting any of the following criteria should be exempted from the requirement to be held under the U.S. IHC:

- Considerably small entities should be exempted from the IHC requirement because all the costs of obtaining consent from related parties and reorganizing complicated management structures and others should be greater than keeping those entities under the IHC.
- If a foreign bank does not control an entity, holding such an entity under an IHC would not improve governance and hence benefits may not outweigh costs. Therefore, if a foreign bank holds an ownership of 25 percent or more in an entity but another shareholder has larger interests in the same entity (i.e. the foreign bank does not have effective control over the entity), such an entity should be exempted from the IHC requirement.
- Requiring FBOs to transfer their indirectly-held interests to the IHC will complicate organizational restructuring. Therefore, if a foreign bank holds an ownership of 25 percent or more in a non-U.S. subsidiary and that subsidiary owns a subsidiary inside the U.S. (i.e. the foreign bank indirectly owns the U.S. subsidiary), that U.S. subsidiary should be exempted from the IHC requirement.
- Since there is no ground for applying risk-based capital requirements and liquidity standards to non-financial subsidiaries (i.e. a subsidiary which is not engaged in financial activities), these non-financial subsidiaries should be exempted from the IHC requirement.
- Subsidiaries operating for a branch's funding purposes such as those issuing commercial paper and ABCP vehicles are managed in conjunction with the branch and are covered by the branch's risk management framework including stress testing for liquidity risk management purposes. Therefore, such subsidiaries should be exempted from the IHC requirement.

Q11 : What, if any, tax consequences, international or otherwise, could present challenges to a FBO seeking to (1) reorganize its U.S. subsidiaries under a U.S. IHC and (2) operate on an

ongoing basis in the United States through a U.S. IHC that meets the corporate form requirements described in the proposal?

We respectfully request the Board to discuss with tax authorities or other relevant authorities to apply a simple accounting and tax treatment to transferring subsidiaries to a U.S. IHC, as compared to the general treatment.

Further, we also request clarification of the tax treatment of a minority investment in a subsidiary held under a U.S. IHC by an entity outside that IHC. Please also make clear that applying the U.S. tax consolidation rules (investment of 80 percent or more to be consolidated for tax purposes) after the establishment of the IHC is allowed.

Q12: What other costs would be associated with forming a U.S. IHC? Please be specific and describe accounting or other operating costs.

The proposed rule is unclear about the specifics of the IHC consolidation process including merger and transfer of assets/liabilities. With regards to the consolidation process at the IHC level, flexible approaches should be allowed as necessary, including waiver of section 23A of the Federal Reserve Act ("FRA") or other provisions.

(Others)

Ⅲ. B. IHC Requirements for FBOs With Combined U.S. Assets of $10 Billion or More (P.43)

– Establishment of multiple IHCs

While the Notice of Proposed Rule-making ("NPR") indicates that a FBO may exceptionally be permitted to establish multiple IHCs, relevant conditions/criteria are unclear and should therefore be stipulated in detail. The proposed rule should provide an option/latitude to allow the establishment of multiple IHCs in order to facilitate management of various types of subsidiaries that may have different business strategies such as banks and broker-dealers.

Ⅲ. Applicable Standards and Supervision (P.46) Reporting Requirement

To integrate management information of subsidiaries held under an IHC, it is necessary to build management functions within the IHC that address development of management information systems (MIS), compliance and other relevant matters. Given that this entails establishment of U.S. enterprise-wide risk management framework and development of a large-scale IT system infrastructure, we respectfully request the Board to consider setting a transitional period for reporting or reducing the reporting requirements for a certain period.

Ⅳ. Risk-Based Capital Requirements and Leverage Limits

(General comments)

As mentioned in the Preamble, capital/leverage ratio requirements under the proposed rule should be in line with other international regulatory regimes (e.g. Basel Ⅲ). Under the Basel Ⅲ, the leverage ratio will be calculated and disclosed before 2015 when the proposed rule is scheduled to take effect. Therefore, it would be unnecessary to separately calculate a leverage ratio based on the current U.S. standards.

Further, the derivatives rules established by the Commodity Futures Trading Commission ("CFTC") propose to impose the strict capital requirements on swap dealers held by so-called "*deemed bank holding company*". Regulatory duplication resulting from the IHC requirement should be avoided in order to apply appropriate capital requirements to such swap dealers. We consider that swap dealers held under an IHC should be treated in a similar manner as nonbanks under *a bank holding company ("BHC")* as defined in the proposed capital requirements in the CFTC's derivatives rules under the Dodd-Frank Act, and hence the same capital requirements as "*BHCs*" should be applied.

(Specific comments)

Q18: What concerns, if any, are raised by the proposed requirement that a FBO calculate regulatory capital ratios in accordance with home country rules that are consistent with the Basel Accord, as amended from time to time? How might the Federal Reserve refine the proposed requirement to address those concerns?

While it is unclear how an assessment is to be made as to whether the level of home country prudential standards is equivalent to those of the U.S. rather than requiring individual banks to demonstrate the equivalency, from an efficiency standpoint, the Board should permit the use of the BCBS's assessment result to confirm compliance with Basel Ⅲ or coordinate with home country authorities. Where discretion is permitted to national jurisdictions under international accords, that discretion should not be regarded as inconsistent.

Further, when the establishment of an intermediate holding company is mandatory, requiring banks to seek additional approval from the U.S. authorities for the use of internal ratings-based approach ("IRB") and internal models, FBOs may face a significant administrative burden. Capital requirements in Japan are also consistent with the Basel Ⅲ and hence obtaining additional approval from the U.S. authorities is unnecessary. We therefore request the Board to allow the use of the Basel Ⅲ-based IRB and internal models provided that they have been approved by Japanese authorities.

Q19: Should the Board require a FBO to meet the current minimum U.S. leverage ratio of 4 percent on a consolidated basis in advance of the 2018 implementation of the international leverage ratio? Why or why not?

As mentioned above, FBOs may provide, through their broker-dealer subsidiaries, important services such as facilitating and funding investments in U.S. government bonds by their home country investors, thereby playing an important role in providing liquidity to the U.S. government bond markets. In those cases, the balance sheet of FBOs could expand significantly as a result of U.S. government bond repo transactions that are substantially risk free. Therefore, repo transactions backed by the U.S. government bonds should be excluded from FBOs' leverage ratio calculations.

V. Liquidity Requirements

(Specific comments)

Q20: Is the Board's approach to enhanced liquidity standards for FBOs with significant U.S. operations appropriate? Why or why not?

We do not agree with the Board's proposal to implement liquidity risk management at the U.S. operations and the IHC levels for the following two reasons. Liquidity risk of internationally active banks should be basically supervised by home country authorities, and in case of SIFIs, the Crisis Management Group framework should be additionally utilized.

(i) Enhancement to liquidity management framework in line with the "Principles for Sound Liquidity Risk Management and Supervision" issued by BCBS on September 25, 2008 and development of international regulatory framework such as Basel III liquidity requirements have been made. Particularly for SIFIs, an internationally cooperative initiative for recovery and resolution planning by the Crisis Management Group which is chaired by home country authorities and participated by authorities of related jurisdictions is in place.

(ii) Funding activities for U.S. dollars and other major currencies are generally conducted on a global basis.

Specifically, we are concerned about the following three points:

First of all, given that FBOs are subject to rigorous liquidity risk management requirements at the U.S. consolidated level, we consider it an overregulation to require separate liquidity management at IHC and U.S. branch levels. We therefore request the Board to permit funding between the U.S. branch and IHC as well as between affiliated companies under an IHC without restriction in order to ensure flexible and effective liquidity management at an FBO level.

Secondly, it is highly unlikely for a parent company of a FBO holding large assets in the U.S. to suddenly withdraw its commitment to its U.S. business for reputational reasons. Therefore, the U.S. branch should not be required to maintain liquid assets in the U.S. as long as the parent company has a sufficient liquidity reserve in the home country and expresses its commitment to support the funding of its U.S. branches. Further, if liquid assets are required to be maintained in the U.S., intracompany cash flows should not be included in stress testing.

Finally, Regulation W substantially prohibits a U.S. subsidiary bank from, for example, transferring funds to its affiliate, and therefore cash generated from a sale of a liquidity buffer cannot be used effectively. As a result, FBOs may be forced to increase liquidity requirements as a whole. This would put foreign banks in an unfavorable position vis-à-vis their U.S. counterparts which are allowed to manage liquidity on a global basis it is also inconsistent with the proposed rule stating that it does not intend "to increase the foreign banking organization's overall consolidated liquidity requirements". To address this, Regulation W should also be amended.

Q22:The Dodd-Frank Act contemplates additional enhanced prudential standards, including a limit on short-term debt. Should the Board adopt a short-term debt limit in addition to, or in place of, the Basel III liquidity requirements in the future? Why or why not?

A decrease in short-term debt does not necessarily contribute to an improvement in the Net Stable Funding Ratio ("NSFR") under Basel Ⅲ. The intention of the NSFR is to indirectly regulate the ratio of short- and long-term debt through not just funding but also the asset side. Given this, the adoption of a short-term debt limit in addition to the Basel Ⅲ liquidity requirements could result in a regulatory duplication and thus should be avoided.

Q23:Should FBOs with a large U.S. presence be required to provide cash flow statements for all activities they conduct in U.S. dollars, whether or not through the U.S. operations? Why or why not?

It is the cash outflows from the U.S. that could cause a direct impact on the U.S. financial system under the financial stress. Therefore, the impact on the U.S. financial system can be estimated with the net amount of such cash flows. In addition, the implementation of proposed periodic reporting of global consolidated cash flows that are in U.S. dollars requires considerable IT systems development. Hence, it is more reasonable to require FBOs with combined U.S. assets of $50 billion or more to report net cash outflows from the U.S. in U.S. dollars, rather than to require them to report global consolidated cash flows that are in U.S. dollars. In particular, cash flows associated with repos involving U.S. government bonds held by non-U.S. bases should be exempted from the application of this requirement because the purpose of such cash flows is evident.

If the Board is concerned about the impact on U.S. operations under stressed conditions, such concerns can be addressed by assessing the effectiveness of liquidity risk management (e.g. stress testing, contingency funding plan) conducted by individual banks on a global basis. Therefore, as an alternative to such reporting requirements, approval by home country authorities of such practices through periodic inspection should be sufficient.

Further, if the Board requires the reporting of global consolidated cash flows that are in U.S. dollars, we request the Board to give due consideration to the additional burden caused by such reporting, and thereby allowing simplified calculation methods or setting a reduced reporting frequency and transaction terms .

Q24:What challenges will FBOs face in formulating and implementing liquidity stress testing described in the proposed rule? What changes, if any, should be made to the proposed liquidity stress testing requirements (including the stress scenario requirements) to ensure that analyses of the stress testing will provide useful information for the management of a company's liquidity risk? What alternatives to the proposed liquidity stress testing requirements, including the stress scenario requirements, should the Board consider? What additional parameters for the liquidity stress tests should the Board consider defining?

As described in our comment to questions 20 and 23, global-based liquidity stress testing should be sufficient provided that such stress testing is assessed as effective by home country authorities. Further, as mentioned later in the stress test requirements section, SIFIs in particular are subject to liquidity stress testing under the international framework for recovery and resolution plans. We therefore believe that U.S. authorities should conduct their due regulatory activities through this framework. With regard to our comment on the proposed rule itself, it is not practical to implement stress testing separately at IHC and U.S. branch network for combined U.S. operations which are managed on an integrated basis.

Moreover, conducting global-based stress testing required by Japanese regulators on a quarterly basis, analyzing its impact on the U.S. operations specifically and reporting the results to the Board will cause a significant burden on financial institutions. Taking this burden into consideration, we request the Board to provide a sufficient timeframe and also to take into account national holidays in home countries in setting the timing of reporting implementation.

In addition, as the proposed rule stipulates that external stressed cash flow needs for liquidity buffer calculation purposes should be calculated in accordance with the stress test requirements under §252.226, it is our understanding that such external stressed cash flow needs are calculated based on cash flow projections using reasonable assumptions. On the other hand, the proposed rule states in page 78 that the external stressed cash flow need is the difference between cash outflows and inflows on a "must pay" basis. To avoid misunderstanding, the proposed rule should stipulate that the external stressed cash flow need is the difference between stressed cash outflows and inflows using reasonable assumptions including those regarding the future behavior of assets.

Q25: The Board requests feedback on the proposed approach to intragroup flows as well as the described alternatives. What are the advantages and disadvantages of the alternatives versus the treatment in the proposal? Are there additional alternative approaches to intracompany cash flows that the Board should consider? Provide detailed answers and supporting data where available.

Intragroup flows should not be subject to stress testing. As mentioned in our comment to question 20, for reputational reasons it is generally unlikely that a parent holding large assets in the U.S. will suddenly withdraw its commitment to its U.S. business. Therefore, it is assumed that the U.S. branch relies on funding from its head office in securing liquid assets to be maintained in U.S. Although the proposed rule proposes several approaches to calculate the net internal stressed cash flow needs, none of them is considered to be practical. If stress testing conducted in a home country concludes that there are sufficient funds in the home country and the head office demonstrates the willingness to support its U.S. branch, internal cash flows should be exempted from stress testing. Specifically, entire internal sources should be counted in full, provided that global-based stress testing is properly implemented, measures to respond to stressed conditions are in place and the head office demonstrates its intention to support its U.S. branch.

Q26:Should U.S. branch and agency networks be required to cover net internal stressed cash flow needs for days 15 to 30 of the required stress scenario within the United States? Should U.S. branch and agency networks be required to hold the entire 30-day liquidity buffer in the United States?

As mentioned in our comment to question 20, U.S. branch and agency networks should not be required to cover net internal stressed cash flow needs for days 15 to 30 within the U.S. Further, they do not necessarily need to hold the entire 30-day liquidity buffer within the U.S.

Q27:The Board requests comment on all aspects of the proposed definitions of highly liquid assets and unencumbered. What, if any, other assets should be specifically listed in the definition of highly liquid assets? Why should these other assets be included? Are the criteria for identifying additional assets for inclusion in the definition of highly liquid assets appropriate? If not, how and why should the Board revise the criteria?

Under the proposed rule, Japanese government bonds and other EU sovereign bonds that are deemed as high quality liquid assets under the Basel liquidity framework are not necessarily treated as highly liquid assets (HQLA), hence a firm needs to demonstrate how and/or why they should qualify as high quality liquid assets to the Board. This leaves the risk where FBOs have to manage liquid assets separately for the U.S. requirements. To avoid such redundancy, the proposed rule should permit HQLA under the Basel liquidity framework to be deemed as eligible highly liquid assets without requiring a separate explanation to the Board. In addition, the Board should also allow securities obtained through repos and assets that can be used as collateral for Discount Window to be treated as eligible liquid assets. Further, the proposed rule requires liquid assets to be held "in the U.S.". If such assets are also eligible for highly liquid assets, the Board should allow them to be treated as liquid asset regardless of where they are held.

Q28:Should the Board require matching of liquidity risk and the liquidity buffer at the individual branch level rather than allowing the firm to consolidate across U.S. branch and agency networks? Why or why not?

The matching of liquidity risk and liquidity buffer at each individual branch and agency level may result in inefficient holding of liquidity buffers. Further, in some cases, liquidity management activities are conducted across U.S. branches and agency networks on an integrated basis. Given this, identifying liquidity risks and matching them with corresponding liquidity buffers should be executed on an aggregated basis reflecting the actual funding activities.

Q30:In what circumstances should the cash portion of the liquidity buffer be permitted to be held in a currency other than U.S. dollars?

Given the fact that markets for currency swaps and foreign exchange forwards functioned to a certain extent during the financial crisis in the past, it is reasonable to assume that the conversion from a non-U.S. dollar currency to U.S. dollars is feasible within certain levels of the market liquidity that is in line with those in the past financial stress. Therefore, entities should be allowed to hold the liquidity buffer in a non-U.S. dollar currency to a certain extent, provided that markets for currency swaps and foreign exchange forwards are deemed to be functioning.

At a minimum, the liquidity buffer held outside the U.S. should be permitted to be in local currencies, because it is usually the case in practice. Further, to ensure consistency with the contingency funding plan, those assets eligible for the Discount Window collateral including non-U.S. dollar denominated should be counted as the U.S. liquidity buffer.

Q31: Should the Board provide more clarity around when the liquidity buffer would be allowed to be used to meet liquidity needs during times of stress? What standards would be appropriate for usage of the liquidity buffer?

Since the liquidity buffer is required at an IHC level to ensure mutual support during times of stress, current intragroup funding restrictions should be softened, allowing the use of liquidity buffers during periods of financial stress.

Discussions on this issue should be harmonized with those under the Basel III framework.

Q33: Should FBOs with a large U.S. presence be required to establish and maintain limits on other potential sources of liquidity risk in addition to the specific sources listed in the proposed rule? If so, identify these additional sources of liquidity risk.

As funding structures differ across banks, it is unpractical and may inhibit efficient funding to set limits for all of the funding methods/categories listed in the proposed rule. Funding limit framework of FBOs are reviewed by home country authorities through inspection/supervision. Therefore, additional limit requirements by the U.S. authorities are unnecessary.

Q34: The Board requests comment on all aspects of the proposed rule. Specifically, what aspects of the proposed rule present implementation challenges and why? What alternative approaches to liquidity risk management should the Board consider? Are the liquidity management requirements of this proposal too specific or too narrowly defined? If, so explain how. Responses should be detailed as to the nature and effect of these challenges and should address whether the Board should consider implementing transitional arrangements in the proposal to address these challenges.

Currently, a cash management operation is conducted on an entity basis. Thus it would be burdensome to perform intraday liquidity monitoring on the combined US operations by collecting/aggregating relevant information from all entities under the IHC. Thus, we respectfully request that the proposed rule allows intraday liquidity monitoring on an entity basis.

We also request such intraday liquidity monitoring requirements for the U.S. banking activities to be applied only to U.S. dollar transactions. Further, intraday liquidity monitoring on settlement activities conducted through a correspondent bank (a direct participating bank in settlement) is impossible unless the correspondent bank discloses relevant information. Therefore, we request it takes some sort of other requirements including mandating such correspondent banks to disclose relevant information.

If the proposed rule requires FBOs to monitor intraday liquidity positions on a real-time basis, the Board should provide sufficient lead time for IT systems development/modification.

(Others)

V. Independent Review (P.67)

There seems no need for liquidity risk to be reviewed separately from the management functions reviewing for other risks. Please confirm that like other audits, review by an independent internal audit group is sufficient.

V. Contingency Funding Plan (P.87)

The total amount available from FRB Discount Window, Federal Home Loan Board facilities and others should be permitted to be included in the contingency funding plan.

VI. Single-Counterparty Credit Limits

(Specific comments)

Q35 : What challenges would a FBO face in implementing the requirement that all subsidiaries of the U.S. IHC and any part of the combined U.S. operations are subject to the proposed single-counterparty credit limit?

To avoid overlap, the proposed rule should achieve consistency with the large exposure framework which is currently discussed by the BCBS.

The proposed rule requires an IHC to aggregate exposures of its U.S. branches in calculating its net credit exposure to the counterparty. However, it is not reasonable nor practical from a risk management perspective to identify the exposures of its U.S. branches on their own for products whose exposure is managed through netting agreements and collaterals on a global basis, such as derivatives.

The proposed rule stipulates *a 25 percent limit* to the aggregated counterparty exposures that include those to the related entities that the counterparty owns, controls, or holds 25 percent or more of a voting right or total equity of the entity. However, we respectfully request that these conditions be eliminated from the proposed rule. Further, the proposed rule is unclear about the treatment in cases where multiple parents respectively own 25 percent or more of a subsidiary to which FBOs have exposures (specifically, whether such exposures are duplicately included in the credit exposure calculation to all such parents).

FBOs are required to comply with the requirements of the proposed rule on a daily basis. Given, however, that single-counterparty credit limits are applied to the combined U.S. operations, FBOs need to aggregate exposures across multiple entities with the adjustments on collaterals. Giving due consideration to operational burdens, single counterparty credit limit rule should be applied on a monthly basis.

Further, immaterial subsidiaries should be exempted from the relevant data collection/aggregation for exposure calculation purposes.

As those FBOs currently exceeding the proposed credit limit (i.e. 25%) need time to take necessary actions such as capital increase, the Board should consider allowing exceptional treatment or certain lead time for compliance to such FBOs.

Q36: Because a FBO may have strong incentives to provide support in times of distress to certain U.S.-based funds or vehicles that it sponsors or advises, the Board seeks comment on whether such funds or vehicles should be included as part of the U.S. IHC or the combined U.S. operations of the FBO for purposes of this rule.

Regarding exposures arising from transactions through funds managed by an affiliated investment advisor under a discretionary investment agreement (excluding those whose profits and losses are attributable to the FBO), it is reasonable to exclude such exposures from the scope of exposure aggregation because the fund assumes risks. Therefore, the proposed rule should clarify the concept of "control" to specify that unless an FBO has discretion over investment, and profits/losses arising from such transactions are attributable to the FBO, U.S-based funds or vehicles that the FBO sponsors or advises should not be included as part of the U.S. IHC or the combined U.S. operations of the FBO for purposes of this rule.

Q39: What additional credit exposures to foreign sovereign entities should be exempted from the limitations of the proposed rule?

Government Sponsored Entities ("GSE") should be treated as foreign sovereign entities.

Q45: Should the list of eligible collateral be broadened or narrowed? Should a covered entity be able to use its own internal estimates for collateral haircuts as permitted under Appendix G to Regulation Y?

Given its high marketability, listed stock can be deemed as eligible collateral if a haircut is taken into account. If sovereign bonds are excluded from eligible collateral with the exception of home country and the U.S. government bonds, it will give rise to an unlevel playing field for FBOs in U.S. repo/lending markets, and may result in market distortions. To correct such unfair treatment of exposures of repo/securities lending transactions which are collateralized by sovereign bonds (other than Japanese/U.S. government bonds), corporate bonds and stock, the proposed rule should permit marketable sovereign bonds, corporate bonds and stock as eligible collateral (provided haircuts are properly established).

Q46: Is recognizing the fluctuations in the value of eligible collateral appropriate?

There should not be any significant issue in reducing the frequency of collateral valuation even if exposures are managed on a daily basis as long as conservative haircuts are applied. If daily exposure management were required, the frequency of the valuation of collateral or other assets subject to netting should be reduced if conservative approaches are taken.

Q56: Would additional exemptions for FBOs be appropriate? Why or why not?

We respectfully request the Board to clarify the treatment of central counterparties (CCPs). In case a CCP is counted as a counterparty, the 25 percent limit under the proposed rule may be breached. Therefore, if a CCP is deemed as counterparty, the limit should be raised.

Ⅶ. Risk Management and U.S. Risk Committee

(Specific comments)

Q59: As an alternative to the proposed U.S. risk committee requirement, should the Board consider requiring each foreign baking organization with combined U.S. assets of $50 billion or more to establish a risk management function solely in the United States, rather than permitting the U.S. risk management function to be located in the company's home office? Why or why not? If so, how should such a function be structured?

Where a U.S. branch oversees an IHC and has responsibility for risk management within the U.S., the proposed rule should allow FBOs to establish the U.S. risk committee (with the participation by the IHC directors) within the U.S. branch, instead of the IHC, provided that the U.S. branch has relevant authorities over the IHC and other entities.

Q70: Should the Board consider specifying by regulation the minimum qualifications, including educational attainment and professional experience, for a U.S. chief risk officer?

In our view, banks should be given discretion in appointing a U.S. chief risk officer and thus requirement by the proposed rule of minimum qualifications including education and professional experience is too excessive.

(Others)

Ⅶ. Responsibilities of the U.S. risk committee (P.122)

We respectfully request the Board to clarify the required authorities and roles of the U.S. risk committee (including more specific roles under the proposed rule with regards to the "control objectives in management goals and compensation structure" and the expected responsibility by each risk category) both at the U.S. branch and subsidiaries under the IHC as this is necessary to understand the relationships between the risk committee at each level of organization.

Ⅷ. Stress Test Requirements

(General comments)

Given that the soundness of FBOs is sufficiently ensured by complying with Basel Ⅲ-based capital requirements and liquidity standards as well as through supervision by home country authorities, requiring FBOs to conduct stress testing in the same way as the U.S. rule would be redundant. Further, it could result in the extraterritorial application since U.S. authorities could impose stricter requirements on FBOs than required by their home countries. Therefore, stress testing required by home country authorities should be accepted by the Board as that compliant with the U.S. requirements provided that the prudential standards under Basel II are in place in the home country.

Moreover, SIFIs, in particular, need to develop a recovery and resolution plan under the supervision of the Crisis Management Group ("CMG") comprised of the relevant authorities. Therefore, the Board should first utilize the stress test framework under CMG to take due regulatory action, instead of imposing additional U.S. requirements or requiring reporting based solely on the asset size of FBOs.

(Specific comments)

Q74: Should the Board consider conducting supervisory loss estimates on the U.S. branch and agency networks of large FBOs by requiring U.S. branches and agencies to submit data similar to that required to be submitted by U.S. bank holding companies with total consolidated assets of $50 billion or more on the FR Y-14? Alternatively, should the Board consider requiring FBOs to conduct internal stress tests on their U.S. branch and agency networks?

Since stress testing is meaningful only when it is accompanied by the bank's capital management, the Board should not require FBOs to conduct stress testing on their U.S. branch and agency networks.

Q75 : Should the Board consider alternative asset maintenance requirements, including definitions of eligible assets or liabilities under cover or the percentage?

State authorities are in the position to know the impact of the bankruptcy of the U.S. branches of a FBO and have the right/responsibility to undertake resolution proceedings when necessary. Branches are required to hold eligible assets required by the state where they are registered, and compliance with such requirements should be sufficient.

(Others)

Ⅷ. B. Stress Test Requirements for U.S. Intermediate Holding Companies U.S. intermediate holding companies with total consolidated assets of $50 billion or more (P.134) - Regulatory Report

Taking into consideration that U.S. IHC is a (non-public) subsidiary of a home country financial group, their regulatory reporting requirements should be more limited compared to those for public U.S. financial groups.

Ⅷ. C. Stress Test Requirements for Foreign Banking Organizations with Combined U.S. Assets of $50 Billion or More (P.135) – Governance/control of board of directors

The proposed rule stipulates that "the home country capital stress testing regime must set forth requirements for governance and controls of the stress testing practices by relevant management and the board of directors (or equivalent thereof) of the company" but does not provide specific guidance on this matter. Therefore, the Board is respectfully requested to further clarify this requirement.

Ⅷ. Information requirements for foreign banking organizations with combined U.S. assets of $50 billion or more (P.136) – Required information

FBOs may be required to undertake drastic restructuring of the current stress testing procedure, provided that the Board intends to require the same level of information as FRY-14A currently submitted for purposes of Comprehensive Capital Analysis and Review ("CCAR"). Please provide detailed explanation and/or specific examples for the information required by "estimates of the FBO's projected financial and capital condition" and "detailed information content regarding the organization's projected financial and capital condition over the planning horizon", especially the required level of details.

VIII. Information requirements for foreign banking organizations with combined U.S. assets of $50 billion or more (P.136) – Filing deadline

The reporting deadline required by the proposed rule, i.e. January 5 of each calendar year, is based on U.S. bank holding companies whose fiscal year ends in December (CCAR deadline is also January 5). This will cause difficulties in practice for Japanese banks whose fiscal year ends in March as required by the Japanese Banking Act. Given that banks develop their annual business plans (or medium term business plans) first and then assess the impact from stress scenarios, the deadline for the proposed information requirements needs to be adjusted to align with the fiscal year-end in Japan. Therefore, the Board should allow those FBOs whose fiscal year end is other than December to submit required information within 5 days of their fiscal year-end.

Ⅸ. Debt-to-Equity Limits

(General comments)

The debt-to-equity limits effectively mean requiring FBOs to bring capital into the U.S. If this debt-to-equity ratio limitation is imposed at the discretion of the U.S. authority, it may give rise to a reciprocity issue. This requirement on equity should therefore be integrated into a single equity standard which is applied at the parent company level.

Further, if it is set to be introduced, the Board is requested to give due respect to the Basel Ⅲ leverage ratio regime in establishing the framework to avoid dual standards for FBOs.

Invoking this limitation would limit dollar funding activities in the U.S. markets undertaken for asset management purposes in other markets and thus may trigger a failure of a bank. Therefore, this limitation should not be imposed without collaboration with home country authorities and should require consultation with them before applying such limitation.

X. Early Remediation

(General comments)

While the impact of trigger breach is limited within the U.S., some triggers are applied on a global consolidated basis, which may indirectly result in the extraterritorial application of the proposed rule. In particular, Level 2 and Level 3 triggers require higher minimum capital ratios or leverage ratios on a consolidated basis than the minimum thresholds set forth in the Basel Ⅲ Accord. This will undermine the purpose of the globally-agreed capital buffer rules and virtually allow mandatory application of the U.S. rule.

Given that the triggers may actually result in a failure of the bank subject to remediation actions, they should not be imposed without collaboration with home country authorities. Further, a framework where the Board can collaborate with home country authorities when requiring remediation actions should be established.

(Specific comments)

Q84:The Board seeks comment on the proposed risk-based capital and leverage triggers. What is the appropriate level within the proposed ranges above and below minimum requirements that should be established for the triggers in a final rule? Provide support for your answer.

The proposed rule should exclude the leverage triggers. Given that leverage ratio requirements are not implemented under the current capital framework and that the treatment of the leverage ratio under the Basel Ⅲ framework has yet to be finalized, such leverage triggers should be eliminated from early remediation triggers for FBOs. Further, the proposed triggers on risk-based capital ratios should be the same level with the home country standard.

It is unclear whether the minimum risk-based capital requirements applicable to FBOs include capital buffers and/or G-SIFIs surcharges. If they are included, the proposed rule will undermine the purpose of internationally-agreed capital buffers and surcharges.

Q87:What additional factors should the Board consider when incorporating stress test results into the early remediation framework for FBOs? What alternative forward looking triggers should the Board consider in addition to or in lieu of stress test triggers?

Even if common macro scenarios are applied, stress testing may involve arbitrariness with regard to models, sensitivity and other factors. Therefore it is not appropriate to include stress testing as one of triggers for supervisory intervention.

It is also our concern that assessing FBOs' stress tests based on the U.S. stress testing requirements could work as a kind of extraterritorial application of the U.S. rule.

Q99:The Board seeks comment on the proposed approach to market-based triggers detailed below, alternative specifications of market-based indicators, and the potential benefits and challenges of introducing additional market-based triggers for remediation levels 2, 3, or 4 of the proposal. In addition, the Board seeks comment on the sufficiency of information content in

market-based indicators generally.

Equity-based indicators are significantly influenced by factors that are not directly relevant to a company's creditworthiness or soundness, such as market conditions and investors' attitude and such influence may give rise to a negative feedback loop caused by a spillover effect. Equity-based indicators should not be deemed as objective, and therefore use of such indictors for early remediation triggers is not appropriate.

Debt-based indicators are also inappropriate for a trigger because the market liquidity of CDS and subordinated bonds in Japan is low and prices of those are volatile depending on market environment and demand/supply conditions.

(Others)

X. D. Level 1 remediation (heightened supervisory review) (P.161)

The following should be considered:

- Clarification on the Board's assessment criteria for "weakness" and the relevant procedure;
- Confirmation/clarification of transitional provisions/periods;
- Exemptions where home country stress testing satisfies relevant requirements and others and
- Careful consideration of application to avoid extraterritorial application, permitting substituted compliance as in "SD Registration" or other similar frameworks.

X. D. Level 2 remediation (initial remediation) (P.164)

In limiting the growth in total U.S. assets and risk weighted assets when subject to the level 2 remediation, the proposed rule compares average daily combined U.S. assets during a quarter to those during the preceding quarter. Instead of using such daily-average asset figures, quarterly-average figures, for example, the average of the assets at the end of each quarter. (it should be the case for the level 3 remediation as well.)

<u>Other comments</u>

<u>II. A. Scope of Application (P.21) – U.S. assets</u>

FBOs may increase their deposits at the Federal Reserve Banks ("FRB"), short-term U.S. government bonds or other assets to beef up their liquidity positions and as a result could exceed the asset threshold and subject to enhanced regulation. To avoid discouraging FBOs' effort to maintain sufficient liquidity buffer by applying tougher regulations as a result of such behaviors, we believe that the proposed rule should be amended to exclude such deposits at the Fed and other liquid assets from the definition of the U.S. assets of FBOs.

Further, in calculating U.S. assets, inter-office ("I/O") transactions are netted since figures from a so-called call report (FFIEC 002) are used. However, the proposed rule contains a statement that may indicate that entities should compute U.S. assets on a gross basis: "The company would be required to reflect balances and transactions between the U.S. subsidiary or U.S. branch or agency, on the one hand, and the foreign bank's non-U.S. offices and other non-U.S. affiliates, on the other hand." To avoid misunderstanding, it is requested that the proposed rule specifies that I/O transactions should be netted.

§ 252.3 Definitions (P.199) - Affiliates

Under the proposed rule, the term "Affiliate" is defined consistent with the control concept under the Bank Holding Company Act (the "BHC Act") and differs from the definition for accounting purposes. There could be some cases where an entity may be construed as an affiliate under the BHC Act but not for accounting purposes from the perspective of "significant influence". It is considered that such an entity without significant influence should not be subject to the proposed rule and thus the Board should permit the use of the definition of "Affiliate" for accounting purposes.

§ 252.3 Definitions (P.199) Foreign Banking Organization

If FBOs are required to satisfy the proposed rule (i.e. extraterritorial application), given the diversity across FBOs including the business model, the Board should allow flexible application of the definition of "FBO". Specifically, whether an FBO means a top-tier holding company or a direct parent of a U.S. subsidiary should be flexible.

Exhibit: Matters to be clarified

We respectfully request the following to be clarified in finalizing the rules.

Category (page in NPR)	Item	Matters to be clarified
Formation of IHC P.42	Subsidiaries	・Please clarify that FBO's subsidiaries outside the IHC are allowed to hold the stake of a subsidiary held under an IHC together with the IHC. ・Is it possible that subsidiaries that FBO has a stake of less than 25% be held under the IHC? If so, whether there is any further limitation on the ownership percentage should be clarified.
Formation of IHC P.43	Form of IHC	・The involvement of ultimate holding company (UHC) should be clarified (e.g. whether IHC is subject to direct governance of UHC or whether IHC should be governed and controlled directly under small-sized bank, etc.) ・"Investor" to IHC should include FBO's subsidiary, considering NPR permits multiple investors of IHC. ・U.S. authorities' preference on the formation of multiple IHCs should be clearly indicated. On the other hand, FBO's indirect ownership of U.S. IHC through subsidiaries (where UHC is not IHC's direct holding company) should be permitted. (e.g. a case where an IHC (securities) under parent (securities) under UHC is assumed.) ・Authority's view on the U.S.-wide governance system which includes branches and agencies should be specified. For example, is it possible for the risk committee under U.S. IHC to have authority over U.S. branches and agencies?
Formation of IHC P.44	FED's monitoring of avoidance behavior of regulation	・Cases including examples which will be regarded as regulatory avoidance should be clarified and illustrated. ・Penalties where actions are deemed to be regulatory avoidance should be specified (e.g. strengthening the regulations for branches and agencies).
Formation of IHC P.45	Report of formation	Cases where additional items need to be reported should be clarified with certain examples.
Risk-based capital ratio (RBC) and Leverage ratio (LR) P.53	RBC	・Quarterly reporting should be sufficient in hue with the BCBS Ⅲ Capital Framework. ・The timing when the U.S. starts to implement the Basel Ⅲ Capital Framework and schedule for designating domestic systemically important banks (D-SIBs) should be explicitly stated.

Category (page in NPR)	Item	Matters to be clarified
Risk-based capital ratio (RBC) and Leverage ratio (LR) P.57	RBC	Frequency of reporting and timing of submission should be based on that of home country regulation.
Liquidity P.74	Stress test	For a horizon over 30 days, can support from parent and affiliates be assumed?
Liquidity P.85	Composition of liquidity buffer	"in U.S.", one of the criteria on eligible liquid assets, should mean that IHC/US branch has power of disposition.
Liquidity P.87	Establish and maintain CFP	Support from U.S. branch and agency network and outside of U.S. (eg. parent) should be allowed to be included in a contingency funding plan.
Liquidity P.91	Specific limits	It should be clarified whether specific limits (cap) are required to be set and complied with at the combined U.S. operations level, including IHC and U.S. branch network, or at an-individual entity level.
Single-Counterparty Credit Limits P.108	Eligible collateral	It should be permitted to use calculation methods currently used by subsidiaries as substitute for the FRB method which should be the basic method.
Debt-to-Equity Limits P.142	Debt-to-Equity Limits	Quarterly reporting of the balance sheet figures should be accepted.
Early remediation P.167	Level 3 (recovery)	·It should be clarified whether the memorandum of understanding is to be public or not. ·A clear definition should be provided of "U.S. senior management" to which increasing pay or paying bonus is prohibited, as well as the impact on Bank HQ employees assigned to U.S. Operations and Bank HQ senior management. ·The definition of "U.S. senior management" and whether it includes Bank HQ senior management or not should be clarified.
Early remediation P.158 P.171	Market indicators Example of indicators	The definition of "CDS" (as assumed in the proposed rule) (e.g. an average of multiple figures by CDS providers) should be explicitly provided.

Category (page in NPR)	Item	Matters to be clarified
Single-Counterparty Credit Limits P.249	Calculation method of potential future exposure (P/E)	PE calculation methods currently used by subsidiaries should be permitted as a substitute for the FRB designated method which serves as the default method.
Debt-to-equity Limits P.268-269	Debt-to-Equity Limits	The definition of "eligible assets" that are required to be incorporated in the calculation of debt-to-equity limits should be clarified. *Note: Refer to the definition of "eligible assets" set forth in the Stress Test Requirements.*