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Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Mail Stop 9W-11
Washington, D.C. 20219
Docket ID OCC-2013-0016

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington D.C. 20429
Attention: Comments/Legal ESS
RIN 3064-AE04

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551
Docket No. R-1466

Re: *Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards and Monitoring*

Ladies and Gentlemen:

General Electric Capital Corporation ("*GE Capital*")[1] appreciates the opportunity to comment on the notice of proposed rulemaking (the "*NPR*") issued by the Office of the

[1] GE Capital is a subsidiary of the General Electric Company ("GE"), a diversified holding company that employs over 300,000 people and operates in approximately 160 countries worldwide. GE's businesses include energy, aviation, healthcare, transportation and financial services. GE Capital provides a broad range of financial services for consumers and businesses of all sizes, with a focus on providing commercial loans and leases to the middle market and to businesses operating in the same industries as GE's industrial businesses.

GE Capital is a grandfathered unitary savings and loan holding company ("*SLHC*") and was historically supervised by the Office of Thrift Supervision. Since July 2011, GE Capital has

Comptroller of the Currency, the Federal Reserve and the Federal Deposit Insurance Corporation (the "*FDIC*," and, collectively, the "*Agencies*") and published in the Federal Register on November 29, 2013 to implement a quantitative liquidity requirement (the "*U.S. LCR*") based on the international liquidity coverage ratio framework (the "*Basel LCR*") published by the Basel Committee on Banking Supervision (the "*Basel Committee*").[2]

We appreciate that the NPR is one part of a larger international response to the financial crisis, implementing quantitative regulatory liquidity requirements for large financial institutions. We recognize that rigorously managing short-term liquidity is an important component of financial stability, and the U.S. LCR should ultimately prove to be a valuable tool for doing so. At the same time, we have concerns about the proposed implementation of the U.S. LCR, particularly with respect to its effects on non-depository institutions other than bank holding companies ("*BHCs*").[3]

BHCs have been subject to formal risk-based regulatory capital requirements and reporting at the holding company level for many years. Moreover, internationally active BHCs to which the "full" version of the U.S. LCR will apply already have experience in dealing with complex regulatory frameworks such as "advanced approaches" capital rules and have participated in the Agencies' Basel LCR framework Quantitative Impact Study (the "*QIS*")—a detailed, template-based exercise to report on liquidity to national regulators as part of the Basel Committee's monitoring of Basel III.[4] In contrast, non-BHC companies, namely nonbank

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been supervised by the Board of Governors of the Federal Reserve System (the "*Federal Reserve*"). GE Capital is also a nonbank financial company designated for supervision by the Federal Reserve (a "*nonbank SIFI*") under Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "*Dodd-Frank Act*"). As GE Capital is internationally active and does not have substantial insurance activities, it will be subject to the U.S. LCR (as defined below) as proposed.

[2] Agencies, *Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring; Proposed Rule*, 78 F.R. 71818 (Nov. 29, 2013) (U.S. LCR); Basel Committee, *Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools* (Jan. 2013) (Basel LCR).

[3] In this letter, for simplicity, we use the term "*non-BHC company*" to refer to an entity subject to the U.S. LCR that is neither a BHC nor a depository institution.

[4] "Advanced approaches" banking organizations are those with $250 billion or more in total consolidated assets or $10 billion or more in foreign exposures. Generally, these organizations are subject to more stringent rules and accelerated implementation timelines under the Basel Committee's capital and liquidity frameworks. In the United States, advanced approaches BHCs have been developing the complex and data-intensive quantitative models for regulatory risk weighting of assets since the Agencies' 2006 proposed rule to implement the Basel II capital adequacy framework for those advanced approaches BHCs. *See* OCC, Federal Reserve, FDIC and Office of Thrift Supervision, *Risk-Based Capital Standards: Advanced Capital Adequacy Framework*, 71 F.R. 55830 (Sept. 25, 2006). In addition, certain large,

SIFIs and SLHCs, have not historically been subject to formal regulatory capital or reporting requirements at the holding company level.[5]

We believe that this distinction should be taken into account in determining whether to impose an accelerated implementation of the U.S. LCR on non-BHC companies—especially one without a transition period for daily calculation that reflects the technological and operational challenges associated with the LCR calculation. Under the NPR, non-BHC companies would be subject to the U.S. LCR at the same time and in the same manner as the largest U.S. BHCs. The significant implementation challenges faced by the industry as a whole would be particularly acute for non-BHC companies.[6] To avoid an inequitable outcome, we believe that the final rule should provide an extended transition period for companies that have not traditionally been subject to BHC regulatory capital and reporting regimes.

Furthermore, because of their different business models, nonbank SIFIs are likely to engage in significantly less deposit-taking than large BHCs, which we believe will generally translate into lower access to Federal Reserve Bank balances established by depository institution subsidiaries—one of only a few sources of level 1 high quality liquid assets ("*HQLA*"). Without attention to this issue in the final rule, nonbank SIFIs may be at a disadvantage in satisfying their LCR requirement that is due simply to the traditional structure of U.S. commercial banking.

Accordingly, we respectfully request that the Agencies consider modifying the U.S. LCR in accordance with the recommendations described below. The Dodd-Frank Act contemplates that the Federal Reserve's enhanced prudential standards under Section 165 of that Act, including the U.S. LCR, may be "tailored" and may "differentiate among [covered]

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internationally active BHCs have participated in the QIS since the first half of 2011. *See* Basel Committee, *Results of the Basel III monitoring exercise as of 30 June 2011* (Apr. 2012).

[5] Unlike advanced approaches BHCs, only recently have certain SLHCs been required to comply (as of 2015) with U.S. regulations implementing the Basel Committee frameworks on an advanced approaches basis. *See* Federal Reserve, *Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule*, 78 F.R. 62018 (Oct. 11, 2013) (the "*Final Capital Rule*"). The Federal Reserve has not yet proposed regulatory capital requirements applicable specifically to nonbank SIFIs.

[6] We refer to the comment letter submitted today by The Clearing House Association L.L.C., the American Bankers Association, the Securities Industry & Financial Markets Association, the Financial Services Roundtable, the Institute of International Bankers, the International Association of Credit Portfolio Managers and the Structured Finance Industry Group (the "*Joint Trades Comment Letter*"), which explains that even the largest and most operationally advanced BHCs foresee significant challenges with implementation of the U.S. LCR.

companies."[7] We believe that our recommendations are prime examples of "tailoring" that are both entirely within the Federal Reserve's authority and necessary to adequately differentiate between the different types of institutions that may be subject to the U.S. LCR. Implementation of these recommendations would better ensure appropriate parity among BHCs and non-BHC companies with respect to the U.S. LCR without compromising safety and soundness or financial stability. We have also set forth below a number of comments of more general applicability.

1. **The timeline for implementation of the U.S. LCR, particularly including its daily calculation requirements, should distinguish between advanced approaches BHCs and non-BHC companies.**

The NPR calls for an "accelerated transition period" to compliance with the U.S. LCR for all covered companies.[8] This reflects an implicit assumption that all covered companies are similarly situated with respect to their ability to calculate the U.S. LCR and that a longer transition period to develop and test the infrastructure to do so is therefore unnecessary.[9]

As an initial matter, we note the arguments in the Joint Trades Comment Letter that it is premature, based on available data, to conclude that advanced approaches BHCs would in fact be in substantial compliance with the U.S. LCR; that any deviation from the Basel LCR implementation schedule be stayed pending an empirically based evaluation with respect to the U.S. LCR proposal; and that the final rule provide at least initially for monthly instead of daily calculations, combined with monitoring and supervisory oversight, and subject to further discussion with the industry and consideration of relevant issues.[10]

As the Joint Trades Comment Letter makes clear, the U.S. LCR as proposed represents an enormous operational and technological challenge for all covered companies, particularly with respect to the daily calculation requirements, as they attempt to allocate IT resources among

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[7] Dodd-Frank Act § 165(a)(2), 12 U.S.C. § 5365. Federal Reserve Governor Daniel K. Tarullo noted in 2013 that the Federal Reserve "remain[s] committed to applying a supervisory and regulatory framework to [nonbank SIFIs] that is tailored to their business mix, risk profile, and systemic footprint—consistent with the Collins Amendment and other legal requirements under the Dodd-Frank Act." Daniel K. Tarullo, Statement Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (July 11, 2013).

[8] Under the Basel LCR, the LCR requirement will be introduced on January 1, 2015, with a minimum requirement set at 60% and equal annual increases to reach 100% on January 1, 2019. Basel LCR ¶ 10. Under the NPR, the U.S. LCR will also be introduced on January 1, 2015, but with a minimum requirement set at 80% and equal annual increases to reach 100% on January 1, 2017. NPR § _.50.

[9] The Agencies requested comment on this subject in Question 73.

[10] *See* Joint Trades Comment Letter §§ II.A, V.

many competing initiatives.[11] Nonetheless, for the reasons noted above with respect to capital, reporting and participation in the QIS, advanced approaches BHCs have a very substantial "head start" on SLHCs and nonbank SIFIs. Advanced approaches BHCs, particularly the largest BHCs participating in 4G (daily reports) and CLAR, are more likely to already have (or already be developing and implementing) systems, governance and personnel of the sort that will be needed.

To address this disparity, we propose that the final rule allow the Agencies to retain discretion to modify the implementation period for non-BHC companies, particularly for the requirement for daily calculation, based on a particular company's circumstances. Such a modified transition period could, for example, include a phase-in period (running from the time when the final rule becomes fully effective for advanced approaches BHCs and ending no later than January 1, 2017, as implied by the 2014 Basel LCR disclosure standards) during which monthly LCR calculations would be made on a best-efforts basis, combined with monitoring and supervision by the Agencies.[12] This approach could provide reasonable accommodations—consistent with safety and soundness—as the Agencies may determine to be appropriate for companies that traditionally have had different business focuses and been subject to different supervisory requirements. We believe that this approach will be appropriate regardless of the implementation schedule that is ultimately determined for advanced approaches BHCs.

We do not mean to imply in any way that we, or other companies in our position now or in the future, should not rigorously manage liquidity risk pending formal implementation of an LCR requirement.[13] We seek only to highlight that calculating a precise, accurate and reliable LCR, particularly on a daily basis, is a multi-year process that will require changing multiple finance and risk data systems and ledgers while implementing enhanced data governance and validation practices and procedures. Furthermore, institutional resources must be allocated not

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[11] We note in particular the discussion of this issue in Part V.A. of the Joint Trades Comment Letter. We strongly endorse the views expressed in that letter on this issue.

[12] A non-BHC company in such a modified transition period could be required to use best efforts to calculate a materially accurate monthly LCR and to deal with any shortfalls as prescribed by the NPR. However, during the transition period, the company would not be penalized for instances of noncompliance due to technical or logistical challenges of transitioning to full compliance, and would not (to the extent that the Agencies ultimately implement the Basel Committee's contemplated liquidity disclosure standards) be subject to public disclosure of its LCR. Indeed, we echo the Joint Trades Comment Letter in suggesting that public disclosure of information based on systems that are not yet fully developed could be particularly dangerous.

[13] For instance, GE Capital currently conducts extensive liquidity stress testing and has instituted daily or weekly reporting on key balance sheet metrics as well as early warning indicators. In addition, we have commenced building a robust new IT infrastructure to collect and manage global liquidity data more efficiently.

only among these tasks—and not only among requirements of regulatory reform initiatives under the Dodd-Frank Act more generally—but also in response to the cumulative impact of making a full transition to Federal Reserve regulation and supervision for the first time, which includes numerous independent requirements related to reporting, data and controls, governance and many other things.[14] We respectfully submit that this process will pose a unique logistical challenge for nonbank SIFIs and SLHCs that is significant enough to consider extending the transition period for such institutions.

We believe that this view has been reflected in—and that our proposal is therefore consistent with—reasonable accommodations in similar situations for non-BHCs (or for companies with less experience in a particular regulatory context generally). The Agencies' final Basel III capital rules, for example, will apply to advanced approaches BHCs one year earlier than to advanced approaches SLHCs.[15] The Federal Reserve also provided SLHCs with a two-year phase-in period for regulatory reporting requirements.[16] For purposes of the Federal Reserve's stress test rules under the Dodd-Frank Act, BHCs that had not participated in an earlier round of stress tests were given additional time "to develop systems and procedures to be able to conduct the stress tests and collect the information that the [Federal Reserve] may require."[17] A modified transition period for the U.S. LCR would also be one aspect of "tailoring" of enhanced prudential standards for non-BHC companies.

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[14] As a consequence of our new status as a regulated institution supervised by the Federal Reserve, GE Capital is initiating dozens of highly critical projects that require substantial IT and other resources, ranging from a last calendar day close, to ongoing information collection activities for FR Y-10 reports, to the preparation of capital, recovery and resolution plans. BHCs have generally not been required to initiate all such projects at the same time and may have had many such capabilities in place for many years.

[15] Final Capital Rule § _.1(f). *See also* 78 F.R. at 62028 (noting that advanced approaches banking organizations have the infrastructure to implement the Final Capital Rule earlier than covered SLHCs that have not previously been subject to consolidated capital requirements).

[16] Federal Reserve, *Agency Information Collection Activities Regarding Savings and Loan Holding Companies: Announcement of Board Approval Under Delegated Authority and Submission to OMB*, 76 F.R. 81933 (Dec. 29, 2011). Although the Federal Reserve was responsible for the consolidated supervision of SLHCs beginning July 21, 2011, regulatory reporting requirements for SLHCs were phased in over 2012 and 2013, with limited reporting for 2012 and an allowance for "reasonable estimates during the first reporting period." This approach was intended to "allow the SLHCs to develop reporting systems over a period of time and. . . reduce the risk of data quality concerns." *Id.* at 81934.

[17] Federal Reserve, *Supervisory and Company-Run Stress Test Requirements for Covered Companies*, 77 F.R. 62378, 62380 (Oct. 12, 2012). Only the BHCs that had previously participated in the Supervisory Capital Assessment Program were required to conduct stress tests during the cycle that began in October 2012, while others were required to conduct such stress tests beginning in the cycle that began a year later. In this case, the salient distinction

2. The calculation of the U.S. LCR should accommodate nonbank SIFIs whose legal status, organization and lines of business are such that they would typically not be expected to maintain significant Federal Reserve Bank balances.

The NPR includes as level 1 HQLA in the numerator of the U.S. LCR "Reserve Bank balances," defined as balances of certain master and "excess balance" accounts at one of the Federal Reserve Banks. Federal Reserve Bank balances are one of only a very limited number of assets that qualify as level 1 HQLA. As the Agencies note, maintaining such balances is generally limited to depository institutions.[18]

Nonbank SIFIs (and potentially some SLHCs that have historically been subject to fewer activities-based restrictions) do not focus on retail banking and retail deposit-taking to nearly the extent of advanced approaches BHCs.[19] As a consequence, these nonbank SIFIs' liquidity is much less likely to be found in affiliated depository institutions and therefore much less likely to be able to be deposited in a Federal Reserve Bank.

The result is that nonbank SIFIs' access to a key source of level 1 HQLA is likely to be limited relative to advanced approaches BHCs, whose greater retail deposit bases are likely, as a practical matter, to translate into proportionally higher amounts of Reserve Bank balances through their depository institution subsidiaries.[20] For nonbank SIFIs, liquidity that might

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was not BHC versus non-BHC, but significantly different lead times in meeting the relevant systems challenges. With respect to the U.S. LCR, both distinctions are important.

[18] 78 F.R. at 71825.

[19] GE Capital, for example, has two depository institution subsidiaries in the United States (GE Capital Retail Bank, a federal savings bank, and GE Capital Bank, an industrial bank), but they represent a modest percentage of its total consolidated assets. Other nonbank SIFIs could have no depository institution subsidiaries at all.

[20] Advanced approaches BHCs have large depository institution subsidiaries, meaning that (i) they are more likely to manage a greater proportion of their liquidity within the depository institution subsidiaries themselves, and (ii) the depository institution subsidiaries are more capable of accepting significant deposits from a parent BHC and then depositing those funds in a Federal Reserve Bank. Based on September 30, 2013 FR-Y-9C and FFIEC call reports, among the four largest U.S. "universal bank" holding companies (i.e., JPMorgan Chase & Co., Bank of America Corporation, Citigroup Inc. and Wells Fargo & Company), an average of approximately 63% of total consolidated assets were held in the domestic offices of U.S. insured depository institution subsidiaries and an average of approximately 8% of total consolidated assets were represented by balances due from Federal Reserve Banks, compared to 9.75% and 0.79%, respectively, for GE Capital. This supports the inference that advanced approaches BHCs are likely to be making greater use of one of the few available sources of level 1 HQLA than would be feasible for nonbank SIFIs, for the reasons described above. As an example, GE Capital's industrial bank subsidiary would not be permitted to accept demand

have been converted into Reserve Bank balances is instead much more likely to be deposited in third-party commercial banks, where, under the NPR, it would receive no credit toward HQLA and would be subject to the 75% cap on net inflows.[21]

This limitation would effectively place companies without significant depository institution subsidiaries at a disadvantage relative to traditional BHCs. We respectfully suggest that this would be inconsistent with the spirit of tailoring and the differentiation among covered companies as contemplated by the Dodd-Frank Act. To avoid this inequitable outcome, we propose that the final U.S. LCR more flexibly accommodate the different business models and funding profiles of nonbank SIFIs.

Specifically, the final rule could provide that deposits by nonbank SIFIs in third-party commercial banks would be counted as inflows in the denominator of the LCR, but would not be subject to the 75% cap on net inflows, if: (i) the third-party commercial banks or their holding companies are themselves subject to the U.S. LCR or a foreign equivalent; and (ii) the deposits are not concentrated in any one affiliated group of banks.[22] The requirement that the banks or their holding companies be subject to an LCR requirement will ensure that the qualifying deposits remain with the safest and most comprehensively supervised institutions, which will be required to specifically account for outflows to the nonbank SIFI in their own liquidity risk planning.[23] Alternatively, nonbank SIFIs could be permitted to include such qualifying overnight deposits in level 1 HQLA, subject to a haircut established as part of the supervisory process.

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deposits from GE Capital, and its federal savings bank subsidiary's balance sheet would be greatly distorted by significant deposits from GE Capital.

[21] NPR § _.30(d).

[22] This calculation could be accomplished by determining net outflows without taking into account these qualifying deposits, then subtracting the amount of the qualifying deposits from the net outflows. To ensure that this does not result in a minimal HQLA requirement, an overall cap on such inflows from qualifying deposits could be determined and monitored as part of the supervisory process.

[23] Deposits at creditworthy third-party commercial banks have also been treated equivalently to central bank deposits in at least one other liquidity-related regulation under the Dodd-Frank Act. See 17 CFR § 39.33(c)(3) (qualifying liquidity resources of systemically important derivatives clearing organizations, including cash "held either at the central bank of issue or at a creditworthy commercial bank"); see also Commodity Futures Trading Commission, Derivatives Clearing Organizations and International Standards, 78 F.R. 72476, 72490 (Dec. 2, 2013).

3. The Agencies should determine practical expectations for maintaining U.S. HQLA using indicative factors as part of the supervisory process, including whether offshore HQLA is held outside an affiliated prudentially regulated entity and is therefore more likely to be effectively repatriated.

The NPR provides that a covered company "is generally expected to maintain in the United States an amount and type of HQLA that is sufficient to meet its total net cash outflow amount in the United States."[24] While this expectation reflects a concern that liquidity held in other jurisdictions could be trapped,[25] HQLA held in foreign entities that are not themselves subject to prudential regulation or capital requirements are much less likely to present repatriation issues. We believe that the final rule should acknowledge this distinction.[26]

We appreciate that the NPR's use of the phrase "generally expected" signals a degree of supervisory flexibility to determine appropriate parameters based on an institution's unique characteristics, and we recommend that the Agencies clarify in the final rule that this will, in fact, be addressed through the supervisory process. As the Agencies acknowledge, holding HQLA in various geographic locations may be required as a matter of sound liquidity management.[27]

One productive approach in the final rule may be to describe indicative factors that regulators would take into account in articulating practical expectations for U.S. HQLA as part of the supervisory process. In addition to the extent to which foreign HQLA is held in unregulated entities, these factors could include, for example, the extent to which available foreign HQLA exceeds repatriation needs, the extent to which U.S. HQLA would be sufficient to meet U.S. liquidity needs during the first several days of the 30-day calculation period (when any problems with repatriating foreign HQLA would be most likely to manifest) and historical evidence of the ability to effectively reposition liquidity during stressed periods. Supervisors could also generally provide that the amount of foreign HQLA recognized as available under the U.S. LCR must be calculated on a tax-effected basis (that is, after giving effect to a reasonable estimate of federal income tax payments required in connection with the repatriation of such foreign HQLA) or subject to other haircuts that adequately reflect the risks of repatriation.

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[24] NPR § _.20(f).

[25] 78 F.R. at 71831.

[26] The maintenance requirement is another aspect of the NPR that may disproportionately affect nonbank SIFIs, which would generally be more likely to hold offshore HQLA in unregulated entities because there are fewer restrictions on their activities or affiliations with industrial companies.

[27] 78 F.R. at 71831.

4. The final rule should not include an assumed outflow rate for brokered deposits maturing more than 30 calendar days from the calculation date.

The NPR explains that the Agencies view brokered deposits as less stable than stable retail deposits "because of the structure of the attendant third-party relationship"—that is, the lack of a meaningful relationship between the bank and the end user making the brokered deposit.[28] That lack of a relationship is cited as justification for assigning high assumed outflow rates to brokered deposits maturing within 30 calendar days of the calculation date. At the same time, an assumed outflow rate of 10% is also applied to brokered deposits maturing later than 30 calendar days from the calculation date.[29]

Unlike retail deposits, however, the contractual terms of U.S. retail brokered CDs generally provide that early redemptions are possible only in the case of death or adjudication of incompetence of the holder. As a result, any runoff in brokered deposits maturing later than 30 calendar days from the calculation date would occur only as a result of a bank's discretionary accommodation of requests for early redemptions. Given that the bank issuing a brokered CD may often have no direct relationship with the customer—providing little incentive to accommodate such requests—we believe that a zero (or de minimis) outflow rate for brokered deposits maturing beyond the 30-day horizon is appropriate. The 10% assumed outflow rate, by contrast, is punitively high, and we recommend that it be eliminated in the final U.S. LCR.[30]

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[28] 78 F.R. at 71840.

[29] The Basel LCR contemplated that national supervisors might choose to apply a nonzero runoff rate to these deposits because of "supervisory concerns that depositors would withdraw term deposits in a similar fashion as retail demand deposits during either normal or stress times, [or] concern that banks may repay such deposits early in stressed times for reputational reasons." ¶ 84. As explained below, however, these concerns are inapplicable to brokered deposits in the United States.

[30] We identify the assumed outflow rate as a point of concern because it is yet another aspect of the NPR that may adversely affect nonbank SIFIs, which will not have the bank branch networks of advanced approaches BHCs and may therefore be relatively more likely to consider brokered deposits as an available funding source. We also note that the Basel Committee's recent consultative document on the Basel III net stable funding ratio ("*NSFR*") does not include a concept of assumed runoff of deposits with a remaining term of more than one year (the corresponding period over which the NSFR is measured). *See* Basel Committee, *Consultative Document: Basel III: The Net Stable Funding Ratio* ¶¶ 18-20 (Jan. 2014).

5. The final rule should clarify the treatment of assets held in connection with secured lending transactions such as reverse repurchase agreements.

The Basel LCR provides that assets acquired through reverse repurchase agreements, provided that they have not been rehypothecated and are legally and contractually available for a covered company's use, may be treated as "unencumbered" and considered part of the stock of HQLA.[31] Although the NPR appears to contemplate this same treatment under the U.S. LCR, it does not affirmatively and unequivocally state as much. We believe that such a statement in the final rule would be helpful to clarify that such assets may qualify for inclusion in a company's HQLA amount in the same manner as other assets.

Furthermore, under the U.S. LCR as proposed, operational requirements for all HQLA include that the covered company must have the operational capacity to "monetize any HQLA at any time in accordance with relevant standard settlement periods and procedures,"[32] where monetization means "the receipt of funds from the outright sale of an asset or from the transfer of an asset pursuant to a repurchase agreement."[33] We believe that monetization of an asset should also include transfer of the asset in exchange for cash in settlement of an overnight reverse repurchase agreement. In particular, settlement of an overnight reverse repurchase agreement where the counterparty is a Federal Reserve Bank, another entity that qualifies as an issuer or guarantor of level 1 liquid assets or another covered company that is itself subject to the U.S. LCR or a foreign equivalent provides for swift and reliable monetization of the assets held under the reverse repurchase agreement. We believe that such assets merit eligibility for inclusion in HQLA even where a company might not necessarily satisfy all the operational requirements with respect to monetization of other HQLA. We recommend that the final rule acknowledge this, which would provide greater certainty with respect to a monetization technique that is fully consistent with the core HQLA requirement of ability to realize liquidity on demand within short time periods.

With respect to assumed inflow amounts from secured lending transactions, the NPR provides that a bank's inflow amount as of a particular calculation date includes "100 percent of all contractual payments due to the [BANK] pursuant to secured lending transactions, to the extent that the payments are secured by assets that are not HQLA, provided that the [BANK] is not using the collateral to cover any of its short positions."[34] We believe that this provision potentially introduces an ambiguity. The same section of the NPR includes assumed inflow rates from transactions secured by level 1, level 2A and level 2B liquid assets that apply when

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[31] Basel LCR ¶ 31.

[32] NPR § _.20(d).

[33] 78 F.R. at 71829.

[34] NPR § _.33(f)(iv).

the relevant liquid assets are "included in the [BANK'S] HQLA amount."[35] By contrast, the 100% assumed inflow rate applies to transactions secured by assets that are "not HQLA." The difference in phrasing could potentially lead to uncertainty about the treatment of transactions secured by liquid assets that are not included in a company's HQLA amount because the operational requirements for inclusion are not all satisfied. For the avoidance of doubt, we suggest that the final rule clarify that the 100% assumed inflow rate applies to transactions secured by assets that are "not included in the [BANK'S] HQLA amount."

6. The determination not to recognize effective foreign deposit insurance regimes conflicts with the Basel LCR and would significantly disadvantage covered companies that operate foreign depository institutions.

Under the NPR, a retail deposit is "stable" only if the entire amount is covered by FDIC deposit insurance.[36] The exclusion of deposit insurance regimes in foreign countries, even those with credible sovereign backing, is maintained because "experience has proven that without established operational infrastructure or explicit funding arrangement, depositors may not be assured that their funds will be available in a reasonable timeframe."[37] The Agencies also note that they are "contemplating how best to identify and give comparable treatment to foreign deposit insurance systems that are similar to FDIC insurance once international best practices are further developed."[38]

We believe that it is important that the Agencies create a framework for establishing which foreign deposit insurance regimes are effective. The U.S. LCR as proposed would provide a strong disincentive to accept foreign deposits even in jurisdictions with tested national deposit insurance regimes. We believe that this would represent an unfortunate divergence from the international harmonization contemplated by the Basel LCR.

The Basel LCR provides that regulators may choose to require that a deposit insurance scheme be deemed effective only if (in addition to other "effectiveness" requirements) it is "based on a system of prefunding via the periodic collection of levies" and the scheme has "ready access to additional funding in the event of a large call on its reserves."[39] These criteria would be almost directly responsive to the Agencies' articulated concerns and could be incorporated into the final rule. The final rule could also provide that a foreign deposit insurance scheme will be recognized to the extent that it is backed by the full faith and credit

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[35] Id. § _.33(f)(i)-(iii).

[36] Id. § _.32(a)(1). See also 78 F.R. at 71840 (noting that the availability of deposit insurance is a factor in determining the outflow rate applicable to unsecured wholesale funding).

[37] 78 F.R. at 71836.

[38] *Id.*

[39] Basel LCR ¶ 78.

of a sovereign the securities of which have been assigned a 0% risk weight under applicable regulatory capital regulations (in other words, securities that qualify as level 1 HQLA).

7. Outflows from non-maturity instruments should be assumed to occur ratably over the 30-day calculation period, as should any assumed outflows from instruments maturing after the 30-day calculation period.

Under the U.S. LCR as proposed, a covered company would be required to hold sufficient liquidity as of the first day of the 30-day calculation period against instruments without a specified term.[40] We appreciate that this requirement is based on the conservative approach of assuming that outflows under such instruments would occur quickly in a stress scenario. Nonetheless, we are concerned that this requirement, when used in the "worst day" calculation, could effectively eliminate non-deposit funding sources that do not have a term associated with them, such as floating-rate demand notes, from the funding mix of covered companies. In other words, the LCR treatment of these non-deposit funding sources may be so stringent—combining assumptions of improbably high runoff with assumptions of improbably fast runoff—as to greatly reduce their utility to covered companies, notwithstanding their role as a valuable source of funding.

Furthermore, the NPR appears to provide that required outflows from retail term deposits maturing *after* the 30-day calculation period are treated as running off as of the *first day* of the 30-day calculation period.[41] There does not appear to be an explanation of this assumption, the effects of which may be exacerbated given that, as described above, the outflow rate applied to later-maturing brokered deposits is improbably high. Conceptually, we believe that the assumption of immediate day-one runoff of later-maturing deposits is internally inconsistent because such runoff is presumed to be the result of negotiated concessions to maintain client relationships, which would likely occur over the 30-day calculation period. In other words, even if a covered company were to make accommodations to allow customers to withdraw deposits prior to maturity, it is not possible that all such accommodations could be requested, accepted, processed and settled on the very first day of the calculation period.

Regardless of what runoff assumptions are made, all outflows will never occur on the first day of the 30-day period—particularly outflows for instruments that actually mature *after* the 30-day period. Accordingly, we respectfully suggest that the Agencies revisit the timing aspects of the runoff assumptions and undertake an empirical evaluation of the behaviors of the instruments in question. In the absence of such an evaluation, we suggest that the Agencies provide for an assumed straight-line runoff over the 30-day period.

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[40] NPR § _.30(b) (providing that the total net cash flow amount for the LCR calculation always includes the full sum of outflow amounts for certain instruments having no contractual maturity date, even for the first day of the 30-day calculation period).

[41] *Id.*

8. The assumptions about asymmetric outflows and inflows under credit and liquidity facilities should be reexamined by the Agencies in view of strengthened U.S. regulation of liquidity risk, including a "superequivalent" LCR requirement.

Under the NPR, amounts available to a covered company under any credit or liquidity facilities are specifically excluded from its inflows in calculating its LCR, whereas the company is required to assume considerable outflows to all committed credit and liquidity facilities extended by it.[42] We appreciate that this requirement is also part of the Basel LCR and has been the subject of commentary since it was initially proposed. We also understand that, as a tool to prevent problems in the future, the LCR is not intended to assume only what occurred in past periods of market stress. Nonetheless, we respectfully submit that there are two key reasons why the Agencies should now revisit this assumption of asymmetry in finalizing the U.S. LCR.

First, as the Agencies have remarked, the U.S. LCR as proposed is "superequivalent" to the Basel LCR. Most notably, as proposed, the "worst day" requirement would make the U.S. LCR significantly more stringent. In this context, the Agencies could change the asymmetric draws assumption—which we respectfully submit is one of the least empirically grounded or conceptually well justified parts of the Basel LCR—without threatening the "superequivalence" or the overall rigor of the U.S. LCR.

Second, since the Basel LCR was initially proposed, the Agencies have developed a robust framework for enhanced prudential supervision, including with respect to liquidity, of U.S. financial institutions.[43] Within this framework, there is no need for one single metric such as the LCR to do all the work of all aspects of liquidity regulation. Consequently, there is no need to embed unrealistic and unduly conservative assumptions in the U.S. LCR, because other elements of the liquidity regulatory framework will also be present to ensure an institution's safety and soundness and guard against weakness. The asymmetric draws assumption is one that stands out as able to be calibrated to more appropriate levels.

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[42] NPR §§ _.32(e), _.33(a)(3). As others have pointed out before, these assumptions are highly disproportionate to banks' experiences during the financial crisis (or during any other period), even as intentional exaggerations of conditions during periods of stress. See, e.g., The Clearing House, The Basel III Liquidity Framework: Impacts and Recommendations (Nov. 2, 2011) at 13.

[43] As noted by the Agencies, in 2012, pursuant to Sections 165 and 166 of the Dodd-Frank Act, the Federal Reserve proposed enhanced liquidity standards that include provisions on corporate governance, senior management responsibilities, independent review, HQLA holding requirements based on internally developed stress models, a contingency funding plan and limits on sources of liquidity risk. 77 F.R. 594 (Jan. 5, 2012) (Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies) and 77 F.R. 76628 (Dec. 28, 2012) (Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies).

To address the asymmetry, we propose that a nonbank SIFI be permitted to include amounts from committed credit and liquidity facilities extended by covered companies as inflows at the same rates at which it would be required to assume outflows if it extended the same facilities to the same counterparties, but only if the facilities do not contain material adverse change clauses, financial covenants or other terms that could allow a counterparty to cancel the facility if the covered company experienced stress. We believe that this would serve to tailor prudential standards to nonbank SIFIs in a manner that would not exacerbate systemic risk. This rule would provide appropriate assurance that such facilities would indeed be available to be drawn on if the covered company needed to do so.

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We appreciate the opportunity to provide our comments and hope that the Agencies will find them constructive.

Very truly yours,

Kathy A. Cassidy
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