



CENTER FOR CAPITAL MARKETS
C O M P E T I T I V E N E S S

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September 11, 2014

Mr. Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Amendments to the Capital Plan and Stress Test Rules; 12 CFR Parts 225 and 252; Regulations Y and YY; Docket No. 1492 and RIN 7100-AE20

Dear Mr. deV. Frierson:

The U.S. Chamber of Commerce (“the Chamber”), the world’s largest business federation represents the interest of more than three million businesses and organizations of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness (“CCMC”) to promote a modern and effective regulatory structure for the capital markets to fully function in a 21st century economy. The Chamber appreciates the opportunity to comment on *Amendments to the Capital Plan and Stress Test Rules* (“the Proposal”).

The CCMC believes that capital standards and stress tests can be important tools to promote stability within the financial services system. Indeed, some portions of the Proposal seek to address issues that commenters have raised with capital plans and stress tests. However, the CCMC is concerned that the Proposal fails to take into consideration impacts on Main Street businesses, may deprive covered institutions of flexibility, adversely impact business decisions through a rigid regulatory approach and harm independent risk analysis. The CCMC believes that the unintended consequences of the Proposal may undermine financial stability, foster short-termism, and cause distortions in lending and capital formation that will impede economic growth thereby preventing the Board of Governors of the Federal Reserve (“Federal Reserve”) from fulfilling its mandates under the Full Employment and Balanced Growth Act (“Humphrey-Hawkins Act”). Additionally, the CCMC is concerned that in this rulemaking the Federal Reserve has failed to abide by the requirements of the Riegle Community Development and Regulatory Improvement Act (“Riegle Act”).

The CCMC recognizes that these comments are being submitted approximately two weeks after the August 11, 2014 deadline. Nonetheless, the Federal Reserve should exercise its discretion to consider these late-filed comments¹ because they raise concerns that must be addressed not only to ensure that the proposed capital standards and stress tests achieve their intended purpose, but also in order for this rulemaking to comport with legal requirements mandated by the Riegle Act. Our concerns are detailed below.

Discussion

The Proposal would shift the start date of the annual capital plan and supervisory and company-run stress test cycles, the filing date for capital plans and company-tests, and the related planning horizon back from October 1 of a given calendar year to January 1 of the following year. A bank holding company (“BHC”) with total consolidated assets of \$50 billion or more would be required to submit its capital plan and stress test results to the Federal Reserve by April 5 (three months later than under the current rules) and a BHC with total consolidated assets of between \$10 billion and \$50 billion would be required to submit its stress test results by July 31.

The proposal would also modify the capital plan rule to limit the ability of a BHC to make capital distributions in a given quarter to the extent that its actual capital issuances in that quarter were less than the amount indicated in its capital plan. Additionally, the proposal would clarify the application of the capital plan rule to a BHC that is a subsidiary of a U.S. intermediate holding company of a foreign organization, make clear that BHCs and state member banks that have been notified that they have exited their parallel run are not permitted to use the Basel III “advanced approaches” to calculate regulatory capital requirements until the stress test cycles, and, for BHCs, the capital plan cycle, beginning on January 1, 2016. Also, the Proposal would allow (rather than require) resubmission of a capital plan following rejection by the Federal Reserve, add a stricter definition of “BHC stress scenario” to the capital plan rule and eliminate the need to obtain prior approval for “accretive” issuances of capital instruments that would qualify for inclusion in the numerator of regulatory capital ratios.

¹ See e.g., *Ad Hoc Metals Coalition v. Whitman*, 227 F. Supp. 2d 134, 140 (D.D.C. 2002) (finding that late-filed comments should be included in an agency’s administrative record in situations where, for example, highly relevant information comes to light one month after the comment period closes, a final rule has not yet been issued, and comments are submitted “with a sufficient amount of time remaining that the ultimate decision can be influenced”). See also, “[A]gencies may consider late-filed comments . . .” *A Guide to the Rulemaking Process*: Prepared by the Office of the Federal Register at http://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf

The Chamber has commented extensively, domestically and internationally, on the impact of capital standards and financial regulatory initiatives upon Main Street businesses that are the customers of financial institutions. Our comments seek to express our concerns on the adverse impact the Proposal will have on the ability of these businesses to grow and create jobs through accepted modes of capital formation.

1. Failure to Consider Impacts on Main Street Businesses and the Economy

The Federal Reserve must take into account the impact the Proposal will have upon liquidity and capital formation for non-financial businesses. Financial institutions provide capital and liquidity to businesses and serve as a conduit to match investors and lenders with entities that need funding. BHCs, in particular, provide credit and lending that businesses use to expand and create jobs.

Therefore, how the Proposal impacts the ability of financial institutions to lend and extend credit will have a direct bearing upon the ability of non-financial businesses to access the resources needed to operate and expand. In studying the Proposal, it would seem that the Federal Reserve is not taking these non-financial business and economic impacts into account.

In short, the Federal Reserve should consider the impacts of the Proposal upon the customers of financial institutions. If the Proposal impairs capital formation by Main Street businesses, not only will economic activity and job growth be stymied, but these businesses would have to further retrench their financial activities, harming stability in the system. A contemplation of these issues is critical to ensure that financial institutions are acting as the conduit needed to prime the pump of economic growth. Overly prescriptive rules and restrictive capital plans can dry up credit and lead to inefficient allocation of capital, dampening business and economic growth.

As will be discussed below, these effects on non-financial businesses, particularly small businesses require further analysis and public commentary before the Proposal can be finalized.

2. Lack of Legally-Required Analysis

Along with our many substantive concerns, the CCMC is concerned with the process associated with the Proposal. Specifically, we note that the Proposal could have

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wide ranging economic impacts and that the Proposal failed to provide a cost-benefit analysis. Without a cost-benefit analysis, the Proposal does not provide commenters with information to understand the economic impacts of the rules and standards under consideration. These procedural irregularities impaired the ability of commenters to provide the regulators with informed comments on the proposed leverage ratio rules. We write today to further explain these procedural concerns associated with the absence of a cost-benefit analysis in the Proposal.

The Proposal also lacks any analysis that fulfills the Federal Reserve's obligations under the Riegle Act. This law applies to all "Federal banking agencies" defined by cross-reference in Section 4801 of the Riegle Act (12 U.S.C. §1813) to include the OCC, FDIC and Federal Reserve. The Riegle Act mandates that "[i]n determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency shall consider, consistent with the principles of safety and soundness and the public interest (1) any administrative burdens that such regulations would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of such regulations."

The Federal banking agencies covered by the Riegle Act must meet these commitments whether or not they are raised by commenters in the course of a rulemaking because they are statutory requirements for their exercise of rulemaking authority imposing "additional reporting, disclosure, or other requirements on insured depository institutions." There can be no question that the Proposal imposes such additional obligations on insured depository institutions for purposes of the Riegle Act. As an organization representing both depository institutions and their customers, the CCMC has an interest in ensuring that regulators honor their obligations under the Riegle Act. We note that these requirements also apply to many of other regulations associated with implementation of the Dodd-Frank Act by the Federal Reserve and other Federal banking agencies, and not just the Proposal cited in this letter.

To date, however, we have not seen the required analysis for the Proposal and respectfully request that a Riegle Act analysis be submitted for comment. Additionally, the CCMC believes that the Proposal is an economically significant rulemaking, especially when consideration is given the Proposal's impact on Main Street businesses as discussed above. Thus, the Proposal requires enhanced analysis in order to meet various statutory

requirements.² The CCMC would respectfully request that the Federal Reserve declare this rulemaking to be economically significant and submit for comment enhanced analysis to reflect this fact.³

3. Other Concerns

The CCMC is also concerned that the Proposal takes a rigid approach that does not allow a BHC or covered institution to develop a flexible plan to meet its unique needs and market conditions. Under the Proposal's rigid standards, business decisions will be driven by deference to formulaic regulatory fiat rather than the application and exercise of sound business judgment. We believe that maintaining the current BHC stress scenario guidance, rather than requiring the BHC stress scenario to be at least as severe as the Federal Reserve's highly adverse standards, addresses some of these concerns and the need for more flexibility. Applying the Proposal's rigid, one-size-fits all standard could lead to an abdication of robust independent risk management, as well as a misapplication of risk management tools that do not meet the true risk profile of a BHC.

Ensuring that BHCs have the ability to develop plans and scenarios that reflect their unique market positions and needs is necessary to achieve such a balanced approach. Forcing scenarios to be uniform could propagate and concentrate risk rather than lessen it.

Furthermore, the CCMC is troubled by the continued focus on quarterly distributions and issuances. The CCMC has expressed concerns that a focus on quarterly activities breeds short-termism that is detrimental to the long-term health and success of an institution.⁴ An emphasis on rigid quarterly measurements will shorten the time horizon of managerial focus and lead to decision making that could be contrary to the long-term best interests of BHCs.

² The Regulatory Flexibility Act, 5 U.S.C. 603 (b).

³ The Federal Reserve, as recently as October 24, 2011, wrote a letter to the Government Accountability Office acknowledging the need to engage in a cost-benefit analysis and how the Federal Reserve's use of such an analysis, since 1979, has mirrored the provisions of regulatory reform as articulated in Executive Order 13563. See, Board of Governors of the Federal Reserve System, Statement of Policy Regarding Expanded Rulemaking procedures, 44 Fed. Reg. 3957 (1979) and letter from Scott Alvarez, General Counsel of the Federal Reserve, to Nicole Clowers, Director of Financial Markets and Community Investment of the General Accountability Office.

⁴ See [speech by Tom Donohue](#), *Enhancing America's Long-term Competitiveness: Ending the Quarterly Earnings Guidance Game*, Wall Street Analyst Forum, November 30, 2005.

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Conclusion

The CCMC believes that a balanced approach to capital plans and stress tests can help provide financial stability in a risk-based free enterprise system. The concerns expressed in this letter are primarily centered upon a lack of information that prevents informed commentary. The Federal Reserve has failed to consider broader macro impacts upon business capital formation and the economic growth and job creation that result from such activity. It has also failed to meet its obligations under the Riegle Act.

Thank you for your consideration of these concerns and we stand ready to discuss them in greater detail at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' with a long, sweeping flourish extending to the right.

Tom Quaadman

cc: The Honorable Thomas J. Curry, Office of the Comptroller
The Honorable Martin J. Gruenberg, Federal Deposit Insurance Corporation