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COMPETITIVENESS

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April 1, 2015

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

Re: Risk-Based Capital Guidelines: Implementation of Capital Requirements for Global Systemically Important Bank Holding Companies, 12 CFR Part 217, Regulation Q; Docket No R-1505; RIN 7100 AE-26

Dear Mr. de V. Frierson:

The U.S. Chamber of Commerce[1] (" Chamber") created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. The CCMC has commented[2] extensively on these issues in the past and believes that appropriate capital requirements are necessary to avoid over-leveraging. However, leverage and capital standards that are too arduous can have serious and unintended negative consequences. Allowing suitable levels of risk-taking is a necessary element needed to fuel growth and innovation within the overall economy.

The CCMC believes that the proposed capital surcharges on U.S. global systemically important banking organizations ("GSIB") could disrupt the balance between financial stability and reasonable risk taking. This could harm the ability of

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[1] The U.S. Chamber of Commerce (the "Chamber") is the world's largest federation of businesses and associations, representing the interests of more than three million U.S. businesses and professional organizations of every size and in every economic sector. These members are both users and preparers of financial information.

[2] *See* also letter of June 14, 2011 from the Chamber to Federal Reserve Chairman Ben Bernanke on G-SIFI surcharges, letter of October 22, 2012 from the Chamber to the regulators commenting on the proposed Basel III regulations, letter of September 19, 2013 from the Chamber to the Bank of International Settlements commenting on *Revised Basel III leverage ratio framework and disclosure requirements;* letter of September 23, 2013 from the Chamber to the regulators on *Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and their Subsidiary Insured Depository Institutions* and letter of September 19, 2014 to Bank of International Settlements commenting on the Net Stable Funding Ratio.

businesses to access the capital and liquidity needed to grow and operate. Additionally, because American financial institutions are subject to the Volcker Rule and tougher Basel III rules than their international counterparts, the proposed GSIB surcharges could place the U.S. financial system—and by extension our economy—at a competitive disadvantage. Accordingly, we reiterate our request, first made in 2011, for a legally mandated study to be conducted on the impact of proposed GSIB surcharges upon the financial system, Main Street businesses, and economy to ascertain potential negative consequences before these proposals are implemented.

Our concerns are discussed in greater detail below.

Discussion

On December 18, 2014, the *Federal Register* published a proposed rule by the Board of Governors of the Federal Reserve ("Federal Reserve") establishing an approach to identify whether a U.S. bank holding company, designated as GSIBs by the Financial Stability Board ("FSB"), would be subject to a capital surcharge ("proposed GSIB surcharge" or "proposal") pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The proposed GSIB surcharge by the Federal Reserve has been developed in conjunction with the GSIB capital surcharge framework agreed to by the Basel Committee on Banking Supervision ("BCBS").

The proposed GSIB surcharge would require a U.S. bank holding company, designated as a GSIB, with $50 billion or more in total consolidated assets to compute the degree of its systemic importance. Such a firm would calculate its GSIB surcharge using two methods and choose the higher of the two surcharges. The first method would consider the GSIB's size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity, consistent with the BCBS' methodology. The second would use similar calculations, except one input would be on the use of short-term funding instead of substitutability. Under the proposal, estimated surcharges would range from 1.0 to 4.5 percent of a firm's total risk-weighted assets. The failure of a GSIB to maintain the capital surcharge would subject the GSIB to restrictions on capital distributions and discretionary bonus payments. The proposed GSIB surcharge would be phased in starting on January 1, 2016 and becoming fully effective on January 1, 2019.

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

The Federal Reserve must take into account the impact that the proposed GSIB surcharges 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.

Therefore, how the proposed GSIB surcharges impact 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 GSIB proposal, it would seem that the Federal Reserve is not taking into account these non-financial business and economic impacts.

If the proposed GSIB surcharges impair 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. Capital requirements, buffers and surcharges that do not appropriately balance financial stability and reasonable risk taking run the risk that they can work against their intended goals by drying up credit and forcing institutions to inefficiently allocate capital. Such an outcome would produce harmful effects and is deleterious to long term growth prospects.

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**

In 2011, the Chamber wrote to then Federal Reserve Chairman Ben Bernanke requesting that a study be undertaken to understand the domestic and international impacts of a GSIB surcharge upon financial institutions and the economy as a whole.[3] Along with our many substantive concerns, the CCMC is concerned with the process associated with the proposed GSIB surcharges. Specifically, we note that the proposed GSIB surcharges could have wide ranging economic impacts and that the proposal failed to provide any economic analysis. Without such an analysis, commenters do not have information to understand the economic impacts of the rules and standards under consideration. The CCMC writes 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 Community Development and Regulatory Improvement Act (Riegle Act, 12 U.S.C. §4802(a)). 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." [4]

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 by the relevant agencies that impose "additional reporting, disclosure, or other requirements on insured depository institutions." There can be no question that the proposed GSIB surcharges impose such additional obligations on insured depository institutions and, as stated above, will ultimately impact nonfinancial businesses and their customers as well. 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.

[3] Letter can be found at: http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/GIFIS-Capital-Surcharge-Letter-6.14.2011.pdf
[4] 12 U.S.C. §4802(a) (emphasis added).

To date, however, we have not seen the required economic analysis for the proposed GSIB surcharges. Additionally, the CCMC believes that the proposal is an economically significant rulemaking, especially when consideration is given to the proposed GSIB surcharges impact on Main Street businesses as discussed above. Thus, the proposal requires enhanced analysis in order to meet various statutory requirements.[5] The CCMC would respectfully request that the Federal Reserve declare the proposed GSIB surcharge to be economically significant and submit for comment enhanced analysis to reflect this fact.[6]

3. **Emerging Negative Impacts on Main Street Businesses**

In other rulemakings, the CCMC has asked the Federal Reserve to undertake such economic analysis in order to use tools to craft rules appropriate to solve proposals without causing undue collateral damage. Unfortunately this was not done and unforeseen negative consequences are being felt.[7]

For instance, during the consideration of the Volcker Rule ban on proprietary trading, the CCMC warned the regulators that the Volcker Rule would harm the market making and underwriting of debt and equity issuances by businesses. No such analysis was conducted, yet we have seen a reduction in market making and liquidity in the corporate bond market as the Volcker Rule is being implemented. The Bank of International Settlements ("BIS") recently released data showing a sharp decrease in corporate bond holdings amongst U.S. broker-dealers, and has significant concerns over the level of trading volume in the corporate bond market.[8]

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

[6] 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.

[7] An example of an unforeseen consequence that could have been anticipated and corrected through an economic analysis is foreign exchange volatility. U.S. banks report in dollars, while the denominator is calculated in Euros. Reviewing this situation analysts have reported that the recent appreciation of the dollar will cause the GSIB surcharge to increase for several U.S. financial institutions.

[8] *See* Wall Street Journal "Investors Raise Alarm Over Liquidity Shortage" March 18, 2015 http://www.wsj.com/articles/investors-raise-alarm-over-liquidity-shortage-1426701094

For similar reasons the CCMC had requested that an economic analysis be conducted as the banking regulators considered the Liquidity Coverage Ratio. Again, despite the legal requirements of the Riegle Act, no such analysis was conducted. As the Liquidity Coverage Ratio is being implemented, banks are turning away business cash deposits and slashing commercial lines of credit. This has harmed the cash management and liquidity of Main Street businesses and ultimately removes working productive capital needed for economic growth.

We believe that economic analysis can help identify similar flaws with the GSIB surcharge proposal. Indeed, it should be noted that the FSB is conducting a Quantitative Impact Study, micro-economic and macro-economic impact assessments, market survey, and historical loss survey as part of its development of the Total Loss Absorbing Capacity ("TLAC") proposal. Such a holistic evidence based response is important to identify potential flaws and ensure that appropriate responses are crafted to resolve them. Identification of such potential problems could force the Federal Reserve to rethink the utility of moving forward with a GSIB surcharge, or at a minimum redraft the proposal in such a manner as to prevent adverse consequences from developing.

4. Competitive Disadvantage of the U.S. Financial System

The United States, through the Dodd-Frank Act and the implementation of Basel III, has decided to use an array of wide-ranging powers to address levels of risk taking by financial institutions through systemic risk regulations, periodic stress tests, higher capital standards, liquidity coverage ratios and the Volcker Rule to name several.[9]

Most of the major economies have rejected an imposition of the Volcker Rule and if they are considering bans on proprietary trading they are not as sweeping or far reaching as the approach taken by the United States. True to historic trends, the United States has, in implementing Basel III, developed capital standards to be tougher than the global standards and the Dodd-Frank Act will allow financial regulators to make the capital standards tougher than anywhere else around the world.

[9] This is by no means an exhaustive list, as an example Basel III is not yet even completed as the BIS still has to complete the Net Stable Funding Ratio and Total Loss Absorbency Coverage as examples.

At the same time, European Union nations have watered down Basel III capital standards to the fullest extent possible.

Accordingly, the United States has created a system where our largest financial institutions, domestically, will not resemble what a full service financial firm will look like in other parts of the world. This is not a matter of a race for the bottom, but rather that domestic customers may not have the same access to forms of capital that other global actors may. This development will have a long term negative impact upon the competitiveness of the United States economy.

In such an atmosphere, the imposition of a GSIB surcharge on American financial institutions will place them at a further economic disadvantage, create a drag on our financial services sector, and raise the costs of capital for all businesses. An underperforming financial sector will make it more difficult for businesses to raise capital in an increasingly competitive global economy, adversely affecting economic growth and job creation.

Conclusion

Thank you for the consideration of these views. For the reasons described above, the CCMC believes that the impacts of a GSIB's capital surcharge upon the financial system and economy should be studied before any proposals are implemented. We look forward to an on-going dialogue with you and your staff to help address these issues and others that involve the extension of credit used by businesses to expand and create jobs.

Sincerely,

Tom Quaadman