August 5, 2016

Via Electronic Mail

Mr. Robert V. Frierson, Esq.
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551

Re: *Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions* (Docket No. R-1538; RIN 7100 AE-52)

Ladies and Gentlemen:

The Clearing House Association L.L.C., the Securities Industry and Financial Markets Association, the American Bankers Association, the Financial Services Forum, the Financial Services Roundtable and the Institute of International Bankers (collectively, the "**Associations**")[1] appreciate the opportunity to comment on the Board of Governors of the Federal Reserve System's (the "**Federal Reserve**") notice of proposed rulemaking (the "**NPR**") relating to restrictions on the terms of qualified financial contracts ("**QFCs**") entered into by U.S. banking organizations identified as global systemically important banking organizations ("**GSIBs**") and the U.S. operations of foreign banking organizations ("**FBOs**") that are GSIBs (together with

[1] *See* **Annex A** for descriptions of the Associations.

U.S. GSIBs, "**Covered Entities**").[2] The Associations strongly support the NPR, which they believe is a clear, well-considered effort to reduce systemic risk with minimal burden.

By helping to ensure that a major financial firm's orderly passage through a resolution proceeding would not be derailed by QFC close-outs, the NPR addresses one of the remaining ways in which the failure of a major financial firm might destabilize the financial system. To do so, the NPR will enhance the resolvability of GSIBs by (1) reducing the risk that counterparties or courts in non-U.S. jurisdictions would disregard statutory provisions staying the rights of a failed Covered Entity's counterparties to terminate their contracts when the Covered Entity enters a resolution proceeding under a U.S. special resolution framework and (2) facilitating the resolution of a Covered Entity under the U.S. Bankruptcy Code (the "**Code**")[3] and other U.S. resolution regimes by ensuring that the counterparties of a Covered Entity could not unwind their contracts with the Covered Entity based solely on the failure of an affiliate of the Covered Entity.

The Associations support these objectives and the NPR more generally. The Associations believe that the NPR is one of the last important steps in ensuring a more efficient and orderly resolution process for all Covered Entities and further ensuring the effectiveness of the overall resolution strategies for failed GSIBs.

The NPR furthers the effectiveness of these resolution regimes by imposing three separate requirements. First, the NPR would require that counterparties of a Covered Entity agree to subject their QFCs to the stays imposed by the U.S. Orderly Liquidation Authority ("**OLA**")[4] and the Federal Deposit Insurance Act (the "**FDIA**")[5] to the same extent as if the QFCs were governed by U.S. law and the Covered Entity was being resolved pursuant to one of those regimes. By requiring counterparties to agree, in writing, to the stays contained in these special resolution regimes, all counterparties would be limited in their ability to argue that the stays contained in these special resolution regimes are not applicable, regardless of the law governing the QFC.

Furthermore, the NPR would require that counterparties of a Covered Entity agree to limit their ability to exercise certain cross-default rights against the Covered Entity. The exercise of cross-default rights arising because of the default of an affiliate of a Covered Entity may result in the Covered Entity failing or experiencing financial distress as a result of an affiliate's failure, notwithstanding the fact that the Covered Entity would be financially solvent but for the exercise of those rights.

In addition to these two restrictions on the exercise of default rights, the NPR would require that counterparties of a Covered Entity agree to override any restrictions on transfers of

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[2] *Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions*, 81 Fed. Reg. 29169 (May 11, 2016).

[3] 11 U.S.C. § 101 *et seq.*

[4] 12 U.S.C. § 5301 *et seq.*

[5] 12 U.S.C. § 1811 *et seq.*

any credit enhancement in the event of the resolution of a Covered Entity's credit support provider. This requirement is intended to facilitate the transfer of a failed affiliate's credit enhancement obligations to a bridge or other entity during the resolution process without resulting in default rights against the Covered Entity due to the termination of its direct QFCs.

By preventing the exercise of default rights against an entity that is subject to a special resolution regime, or the exercise of cross-default rights against a Covered Entity based on its parent's or affiliate's entry into resolution, the NPR would avoid the potentially destabilizing impact of terminating the Covered Entity's QFC portfolio, substantially enhancing the ability of the Covered Entity to carry out its resolution strategy in a rapid and orderly manner. The requirements of the NPR are particularly beneficial to the "single point of entry" ("**SPOE**") strategy that is employed in some form by the preponderance of the U.S. GSIBs, and may be increasingly applicable to U.S. intermediate holding companies ("**IHCs**") established by FBOs as well. Furthermore, by permitting QFCs to be transferred to a bridge or other entity, the requirements of the NPR facilitate restructurings and similar transactions that support an orderly resolution.

I. Executive Summary

The Associations believe that the provisions of the NPR will accomplish these meaningful objectives and strongly support the Federal Reserve's proposal. However, the Associations believe that several minor modifications to the NPR will further the purpose of the NPR. In line with this belief, the Associations endorse the proposed modifications and clarifications set forth in the comment letter on the NPR (the "**ISDA Letter**") submitted by the International Swaps and Derivatives Associations, Inc. ("**ISDA**"). The Associations fully support the requests (and reasoning behind those requests) in the ISDA Letter and many of those requested modifications and clarifications to the NPR are also described in this letter. The Associations believe that all of these modifications are consistent with the intent behind the NPR and will serve to more effectively implement the purposes of these new requirements. This letter contains three types of proposed modifications, which are described below:

- modifications to exclude certain specialized entities from the definition of Covered Entity;
- modifications to exclude certain types of QFCs from the definition of Covered QFC to the extent not necessary to support a rapid and orderly resolution, or to avoid other adverse consequences; and
- clarifying changes to further the objectives of the NPR.

Specifically, the Associations propose that the following types of entities be excluded from the definition of Covered Entity and that, as a result, QFCs with these entities would not be subject to the requirements in the NPR:

- ***Non-controlled Entities***. Entities that are deemed to be "controlled" by the Covered Entity under the Bank Holding Company Act of 1956 (the "**BHC Act**") but with respect to which the U.S. bank holding company ("**BHC**") or FBO does not have

operational control or does not consolidate onto its financial statements under U.S. generally accepted accounting principles ("**GAAP**").

- ***FBO Subsidiaries Not under IHC***. With respect to an FBO that is required to establish an IHC, the U.S. subsidiaries of such FBO for which the FBO has been given a special relief not to hold such U.S. subsidiaries as subsidiaries of the IHC.

The requirements of the NPR would generally apply to QFCs which a Covered Entity (A) enters into, executes or otherwise becomes party to after the effective date of the final rule adopted on the basis of the NPR (the "**Final Rule**"), or (B) entered into, executed or otherwise became party to prior to the effective date of the Final Rule, if the Covered Entity or an affiliate that is a Covered Entity enters into, executes or otherwise becomes party to a QFC with the same person or an affiliate thereof on or after the effective date of the Final Rule (any such QFC, a "**Covered QFC**").[6] The Associations propose that the following types of QFCs be excluded from the definition of Covered QFC under the Final Rule:

- QFCs that are entered into under agreements, or on terms, that do not give the parties contractual default rights or provide for transfer restrictions.
- Certain QFCs that are issued in the capital markets.
- Covered QFCs governed by U.S. law (with respect to the requirements of section 252.83 of the NPR).
- QFCs with central banks and sovereign counterparties.
- QFCs that are not booked in a U.S. branch or agency of a non-U.S. Covered Entity.
- QFCs with a counterparty where the Covered Entity (or one of its affiliates) has <u>not</u> entered into a post-effective date QFC with that specific counterparty.
- QFCs that are securities underwriting, subscription, purchase or placement agency agreements or any similar type of agreement.
- QFCs as to which the Covered Entity is only an agent, and, in which the default rights under the QFC do <u>not</u> relate to a Covered Entity.

In addition, the Associations believe that there are a few issues that would benefit from further clarification:

- ***Exclusion of Derivatives with CCPs and other FMUs***. The Final Rule should clarify that Covered QFCs exclude not only "cleared" derivatives, but also any QFC that is entered into pursuant to, or becomes subject to, the rules of, or that is entered into with, any financial market utility ("**FMU**"), as well as any ancillary or underlying agreements to any such QFC, and should permit the second "leg" of a QFC cleared by

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[6] NPR § 252.83(a)(2); § 252.84(a)(2).

a Covered Entity on behalf of a client to close out at the same time as the CCP-facing leg even if the client-facing leg is not executed directly with an FMU.

- ***Protection of Other Default Rights***. The Final Rule should confirm the ability of a Covered Entity's counterparty to exercise default rights arising from a failure of the direct party to satisfy a payment or delivery obligation during the stay period (with respect to the requirements of section 252.84 of the NPR).

- ***Scope of Creditors Protections***. With respect to a QFC with a Covered Entity where the QFC is supported by a non-U.S. credit support provider that is *not* a Covered Entity, the Final Rule (i) should confirm that the protections of section 252.84(g) apply in such situations, and (ii) should not require additional amendments to a QFC if the counterparties have adhered to the non-U.S. guarantor's home country module of the ISDA Resolution Stay Jurisdictional Module Protocol (the "**ISDA Stay Protocol**") and the home country resolution regime would stay cross-default rights in respect of the non-U.S. guarantor's subsidiaries.

- ***Clarify Scope of Section 252.84(b)(2)***. Certain technical clarifications should be made to this section of the NPR to clarify that the limitations of this provision permit the exercise of creditors protection rights to the extent permitted under the U.S. special resolution regime.

II. The NPR should be amended to exclude certain entities from the definition of Covered Entities

The NPR would apply to the following entities as Covered Entities:

- A BHC that is identified as a global systemically important BHC pursuant to 12 C.F.R. § 217.402;

- A subsidiary of any such BHC (other than a subsidiary that is a covered bank);[7] or

- A U.S. subsidiary, U.S. branch, or U.S. agency of a global systemically important FBO (other than a U.S. subsidiary, U.S. branch, or U.S. agency that is a covered bank, section 2(h)(2) company or DPC branch subsidiary).[8]

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[7] A "covered bank" is a national bank, Federal savings association, federal branch or federal agency. *See* NPR § 252.81.

[8] NPR § 252.82(a). A "section 2(h)(2) company" is any company organized under the laws of a foreign country (or shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States. *See* 12 U.S.C. § 1841(h)(2). "DPC branch subsidiary means any subsidiary of a U.S. branch or a U.S. agency acquired, or formed to hold assets acquired, in the ordinary course of business and for the sole purpose of securing or collecting debt previously contracted in good faith by that branch or agency." 12 C.F.R. § 252.2(i).

While the Associations broadly agree with the application of the requirements to these entities, the Associations believe that several modifications to the NPR are necessary to better align the Final Rule with the objectives underlying the NPR.

A. Entities over which a GSIB has no day-to-day operational control or which are not consolidated for financial accounting purposes

First, the Associations believe that the requirements in the NPR should not apply to entities that a GSIB (either an BHC or FBO) does not consolidate onto its financial statements for financial accounting purposes under GAAP or any entity over which the BHC or FBO does not have operational control. These entities could include, for example, (i) merchant banking portfolio companies, (ii) joint ventures of which a Covered Entity is a part owner, (iii) entities in which a Covered Entity holds only a minority interest and over which it does not exert a controlling influence, (iv) funds sponsored by a Covered Entity and (v) certain other entities that are not consolidated for financial accounting purposes under GAAP.

As noted above, the NPR would apply to any subsidiary of a U.S. GSIB and any U.S. subsidiary of a non-U.S. GSIB. In addition, aspects of the NPR would also apply to affiliates of a Covered Entity. The NPR does not provide an independent definition of "subsidiary" or "affiliate". Therefore, we understand that these terms would have the meanings given to them under Regulation YY.[9] Regulation YY defines a "subsidiary" as any company which is owned or controlled directly or indirectly by another company, and an "affiliate" as any company that controls, is controlled by, or is under common control with another company (in each case, where "control" is defined as in section 2(a) of the BHC Act).[10] Under the BHC Act, a company has control over another entity if (A) the company directly or indirectly owns, controls, or has power to vote 25 percent or more of any class of voting securities of the entity; (B) the company controls in any manner the election of a majority of the directors or trustees of the entity; or (C) the Federal Reserve determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the entity.[11]

These definitions of "subsidiary" and "affiliate" would sweep into the coverage of the NPR entities that a Covered Entity (or its parent) does not consolidate for financial accounting purposes or over which it would not exercise day-to-day operational control. In particular, as noted above, a subsidiary or affiliate of a Covered Entity would include any entity in which a Covered Entity (or its parent) directly or indirectly owned or controlled more than 25 percent of any class of voting stock – a level that may not give the Covered Entity the practical ability to dictate such matters as the adoption of amendments to QFCs or related agreements. Further, some entities may be deemed to be subsidiaries or affiliates of a Covered Entity (and therefore subject to the requirements in the NPR) where the Covered Entity (or its parent) has an even lower ownership percentage but has been determined to exercise a "controlling influence." In

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9 *See* 12 C.F.R. § 252.2(a).

10 *See* 12 C.F.R. § 252.2(a), (s); 12 U.S.C. § 1813(w)(4), (5).

11 *See* 12 U.S.C. § 1841(a).

such a case, the Covered Entity, or its parent, may not be able to impose the requirements established by the NPR, and counterparties of the entity may be unwilling to accept terms they consider completely alien to the entity with which they are dealing. In some cases, the Covered Entity may, in fact, deliberately seek to separate these entities from itself in terms of public perception, dealings with creditors and similar matters, making it difficult to impose terms that would apply to these entities only due to their relationship with the Covered Entity.

To comply with the NPR, a GSIB must ensure that all Covered Entities (*i.e.*, all subsidiaries and affiliates) within the group have adopted the terms required by the NPR in every QFC. A Covered Entity must amend its legacy Covered QFCs with a counterparty if the Covered Entity, or its affiliate, enters into a new Covered QFC with a counterparty or any of its affiliates. To achieve this, a Covered Entity (or its parent) must be able to direct the actions of each subsidiary that engages in QFC transactions. For the types of entities described above, the Covered Entity (or its parent) generally will not have the level of control necessary to require such actions.

Legal and regulatory restrictions may also limit the ability of a GSIB to ensure compliance with these requirements with respect to these types of entities. For example, under the rules governing investments in merchant banking portfolio companies, entities are prohibited from routinely managing or operating any portfolio company in which the entity has invested under its merchant banking authority.[12] As a result, a Covered Entity does not and cannot have the required level of operational control to be able to ensure compliance with the requirements of the NPR by its merchant banking portfolio companies.

Moreover, entities that are not consolidated for financial accounting purposes or that are not subject to the day-to-day control by a Covered Entity (or its parent) are unlikely to raise the types of concerns for orderly resolution that the Federal Reserve has identified. Neither a Covered Entity nor the parent of the GSIB group would provide credit support to these entities, or name such an entity as a "Specified Entity" in a cross-default provision in a QFC or related agreement. These entities do not provide credit support for the Covered Entities or their parents, and are typically not defined as "affiliates" under trading documentation.[13] Therefore, the failure of any of these types of entities is unlikely to give rise to cross-defaults or otherwise affect QFCs entered into by the Covered Entity, its parent or the affiliates or subsidiaries subject to its (or its parent's) day-to-day control.

Furthermore, the purpose of the GAAP financial consolidation standard is to aggregate businesses that are sufficiently financially and operationally related to justify treating such businesses as a single financial organization. As such, GAAP consolidation is a good test for which subsidiaries would expose another Covered Entity within the GSIB group to material risk

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[12] *See* 12 C.F.R. §§ 225.170-177.

[13] Trading documentation for QFCs typically does not use the BHC Act definition for "affiliates", but instead uses a majority ownership standard. As such, entities that are not subject to day-to-day control generally would not be treated as affiliates under trading documentation and, as a result, the failure of such an entity would likely not trigger cross-default rights under agreements with the related Covered Entity (or vice versa).

or be relevant to the resolution of another Covered Entity within that GSIB group. In addition, subsidiaries that are financially consolidated under GAAP are generally fully integrated into the Covered Entity parent's systems, easing the substantial compliance burdens of the NPR. However, the Associations note that there are certain types of entities over which the GSIB does not have day-to-day control that may be consolidated for financial accounting purposes (*e.g.*, certain merchant banking portfolio companies and certain sponsored funds). Similar to non-consolidated entities, these entities do not expose the GSIB group to material risk, are not relevant to the resolution of a Covered Entity in the GSIB group and generally are not integrated into the GSIB's systems.

Based on the foregoing, the Associations believe that the failure of any such entity would be unlikely to result in further financial distress or failure of the other Covered Entities within the broader GSIB group. Accordingly, the Associations believe that the Final Rule should exclude from the definition of "Covered Entity" any entity that a GSIB does not consolidate onto its financial statement for financial accounting purposes under GAAP or over which a GSIB does not exercise operational control.

B. U.S. Subsidiaries of an FBO that are specifically exempted from the requirement to be subsidiaries of the IHC of the FBO

With respect to FBOs that are required to establish U.S. IHCs, the Associations believe that the Federal Reserve should modify section 252.82(a)(3) of the NPR to exclude U.S. subsidiaries of an FBO that are not required to be held under the IHC.[14] Under the Federal Reserve's rules, an FBO with greater than $50 billion of U.S. non-branch assets is required to create an IHC meeting certain requirements. The IHC is required to hold the FBO's entire ownership interest in any U.S. subsidiary (excluding each section 2(h)(2) company or DPC branch subsidiary, if any). The other U.S. subsidiaries that are not required to be held under the IHC should not be treated as Covered Entities because, similar to section 2(h)(2) companies and DPC branch subsidiaries, these entities do not raise significant resolution process concerns and, like section 2(h)(2) companies and DPC branch subsidiaries, they are not generally subject to the same degree of direct managerial control as the companies that are included in an FBO's combined U.S. operations. Furthermore, similar to the types of entities referenced in Section II.A above, neither a Covered Entity nor the parent of the GSIB group would provide credit support to these entities, or name such an entity as a "Specified Entity" in a cross-default provision in a QFC or related agreement. The failure of any of these types of entities is unlikely to affect QFCs entered into by the Covered Entity or any other affiliate thereof. As such, in addition to the types of entities addressed in Section II.A of this letter, the Associations request that the Final Rule expressly exclude these U.S. subsidiaries of FBOs from its requirements.

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[14] The Associations note that it is their understanding that these types of entities are limited in number and would include entities that have been formally or informally exempted from being held under the IHC. Certain FBOs have requested, and the Federal Reserve has granted, formal exemptions for specifically identified entities. In addition, the Federal Reserve may provide guidance that certain types of entities are not required to be held under the IHC. As noted above, section 2(h)(2) companies and DPC branch subsidiaries would already be exempt from the requirements under the NPR.

III. The NPR should be amended to exclude certain types of QFCs from the definition of "Covered QFCs"

There are a number of categories of QFCs with respect to which the risk of mass terminations is very limited. However, the cost of imposing the requirements of the NPR on these QFCs could be extremely significant. Given the limited risks associated with these QFCs and the very high cost of complying with the requirements of the NPR, the Associations believe that these QFCs should not be subject to the requirements of the NPR. Therefore, the Associations respectfully request that the Federal Reserve modify the Final Rule such that these QFCs are exempt from the requirements contained in the NPR.

A. QFCs with no contractual rights of default or transfer restrictions

As explained above, the NPR would essentially require a Covered Entity to have its counterparties agree to limit the exercise of "default rights" and limit the enforceability of transfer restrictions in their QFCs. A default right with respect to a QFC is defined in the NPR as:

- any right of a party, whether contractual or otherwise (including, without limitation, rights incorporated by reference to any other contract, agreement, or document, and rights afforded by statute, civil code, regulation, and common law), to liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, or modify the obligations of a party thereunder, or any similar rights; and

- any right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral, or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure.

Therefore, the requirements of the NPR effectively apply when a QFC with a Covered Entity provides for certain default rights against that Covered Entity (*i.e.*, to the extent that the QFC grants counterparties termination rights against a Covered Entity in certain situations) or certain transfer restrictions with respect to a QFC.

A large number of QFCs are not entered into pursuant to written master agreements or other agreements that provide for express default rights or transfer restrictions. Instead, these transactions are typically documented only with a simple confirmation setting forth the economic terms of the trade.[15] These types of QFCs include cash transactions for the purchase and sale of securities and foreign exchange ("**FX**") spot transactions (including "securities conversion transactions" as defined by the Commodity Futures Trading Commission (the "**CFTC**") in its rules and regulations or guidance thereunder, from time to time).[16]

Entering into modifications to these agreements to implement the requirements of the NPR would be very burdensome and costly, while providing little benefit in furtherance of the objectives of the NPR. For certain transaction types, such as cash securities and FX spot transactions, implementing the NPR requirements could require a very significant overhaul of existing market practice and documentation. The Associations believe that these efforts would be unnecessary considering that the QFCs at issue do not provide for express default rights (including cross-default rights) or transfer restrictions.

In particular, cash securities and FX spot transactions differ from other types of QFCs in a number of respects, including that they typically have very short maturities. Even if there were default rights (or cross-default rights) under common law with respect to these transactions, it is unlikely that such rights could be exercised effectively before the Covered Entity's obligations come due. If the obligations have come due and have not been performed by the Covered Entity, the NPR would not require the counterparty to agree that it may not exercise its remedies under the law. In fact, these types of QFCs have traditionally not provided for contractual early termination default rights specifically because of their short-term nature. Accordingly, the principal default risk inherent in cash securities and FX spot transactions is limited to non-performance by one's counterparty when its obligations come due, and these performance-related default rights are not affected by the requirements of the NPR.[17] As such, applying the requirements of the NPR to these transactions would provide little to no benefit, while imposing significant compliance burdens on the Covered Entities to modify these longstanding and well-established practices.

In addition, certain types of customer agreements (cash or otherwise) that Covered Entities typically enter into with retail customers, such as brokerage customer or investment advisory account agreements, have no express default or cross-default rights against the Covered Entity. Although these may be QFCs, these types of agreements are not the types of contracts

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15 Although certain common law rights may exist with respect to these QFCs, the Associations are not aware of any common law "cross-default" rights and there typically are no credit support providers – the focus of the requirements in section 252.84 of the NPR.

16 As of the date of this letter, the CFTC has defined "securities conversion transactions" (and determined them to be FX spot transactions) in its swaps definitional release. *See Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement": Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 Fed. Reg. 48208 at 48256-57 (Aug. 13, 2012).

17 The NPR's objective is "restricting [its requirements to] only default rights that are related, directly or indirectly, to the entry into resolution of an affiliate of the covered entity, while leaving other default rights unrestricted." 81 Fed. Reg. at 29177.

that would be relevant to ensure the orderly resolution of a Covered Entity. These agreements also do not contain termination rights that may be exercised by the non-Covered Entity party (either for its own direct default or for the default of an affiliate). These types of contracts define the relationship of the Covered Entity and its customer for future transactions, but the customer can cease to engage in transactions under the customer agreement at any time in its discretion. A decision to stop doing business under a customer agreement would not be a "default right" as defined above and would not be prevented by the Final Rule. Therefore, applying the requirements of the NPR would not result in any meaningful protections to the resolution of the GSIB or the financial stability of the system generally, while imposing a significant compliance burden on Covered Entities to explain the required changes to any such agreement to a very large number of customers that are, for the most part, unfamiliar with the NPR's requirements or objectives.

Therefore, the Associations request that the Federal Reserve exclude QFCs that are executed pursuant to agreements that do not provide for any contractual default rights against the Covered Entity from the scope of Covered QFCs. In particular, the Associations request that (i) QFCs with no contractual direct or cross-default rights against the counterparty Covered Entity and no transfer restrictions be exempt from the requirements of section 252.83 of the NPR and (ii) QFCs with no contractual cross-default rights and no restrictions on the transfer of any related credit enhancement be exempt from the requirements of section 252.84 of the NPR.

B. Certain types of QFCs that are issued in the capital markets

The Federal Reserve should exclude instruments issued in the capital markets that may fall within the definition of QFC, such as warrants, which are issued to multiple investors whose identities are often not known to the issuing entity because of secondary market trading. As such "counterparties" are not identifiable (without significant changes to market practice and infrastructure), it would not be possible for a Covered Entity to ascertain whether a given investor is also a party to another QFC with the Covered Entity or one of its affiliates.[18] In addition, the large numbers of investors in, or holders of, these instruments makes it extremely difficult, if not impossible, to remediate the QFC through amendment of an outstanding issuance.

C. QFCs governed by the laws of the United States or a U.S. State

The Associations also believe that the Federal Reserve should clarify that, if a covered QFC is governed by the law of the United States or a State thereof, that QFC does not need to be conformed to the requirements of section 252.83 of the NPR. The text of section 252.83 of the NPR requires that a covered QFC "explicitly provide" that the conditions in sections 252.83(b)(1) and (2) of the NPR are satisfied. This would appear to require that a Covered Entity amend all QFCs, even those governed by U.S. federal or state law. The Associations believe that such a requirement would impose excessive costs without yielding any benefit. If a covered QFC is already governed by U.S. federal or state law, then the provisions of

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[18] In addition, many of these types of capital market instruments are issued pursuant to pre-existing programs or long-standing market practices. Any change to these practices may require a significant overhaul of these current practices.

section 252.83 of the NPR would be redundant, as the default right stays and overrides provided under the FDIA and OLA would already apply, and the concerns identified by the Federal Reserve would not be relevant. Therefore, the Associations ask the Federal Reserve to clarify that, if a QFC is governed by the law of the United States or a State thereof, it satisfies the requirements of section 252.83 of the NPR and does not need to be amended for purposes of complying therewith.[19]

D. QFCs with sovereign entities and central banks

The Associations believe that the requirements of the NPR should not apply to QFCs entered into by a Covered Entity with a sovereign entity or central bank. Such an exclusion would be consistent with the comparable regulations adopted in the United Kingdom, which exclude contracts entered into with central banks and central governments (including any agency or branch of a central government), and those adopted in Germany, which exclude contracts entered into with central banks.

It is unclear whether central banks (other than the Federal Reserve Banks) or other U.S. or non-U.S. governmental entities would be permitted under applicable statutes, rules or internal requirements to enter into QFCs with limited default rights. To the extent that these entities refuse to agree to the limitations on their QFC default rights (as would be required under the NPR), GSIBs would not have access to these important counterparties, which are key providers of liquidity and foreign exchange to these financial institutions in times of market and financial stress. At the same time, many of these entities may be required to consider systemic risk as part of their decision-making process, such that they may be less likely to exercise QFC termination rights aggressively in a crisis, to the detriment of the financial system. For these reasons, the Associations believe that QFCs with these types of entities do not raise significant resolution concerns, while applying the requirements of the NPR to these QFCs may cut off a key source of liquidity for GSIBs.

The Associations therefore request that the Federal Reserve provide an additional exclusion in section 252.88 of the NPR for QFCs entered into by a Covered Entity with central banks and sovereign entities.

E. QFCs that are not booked in a U.S. branch or agency of a non-U.S. Covered Entity

Under section 252.86(a) of the NPR, a U.S. branch or agency of a non-U.S. Covered Entity would be required to conform master agreements that are Covered QFCs to the extent that transactions under the master agreement are booked at such U.S. branch or agency or payment or delivery may be made at such U.S. branch or agency. The Federal Reserve explained that the

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[19] These Covered QFCs governed by U.S. law would still be required to comply with section 252.84 of the NPR. The Association notes that the ISDA Stay Protocol, which provides a means to comply with the requirements of sections 252.83 and 252.84 of the NPR, does not provide adherents with the option to agree to provisions implementing compliance with just section 252.84 of the NPR.

reason for limiting compliance to just those transactions, payments and deliveries is to "avoid imposing unnecessary restrictions on QFCs that are not closely connected to the United States."[20]

The Associations agree with the Federal Reserve's intent to require compliance with respect to multi-branch master agreements only to the extent that such QFCs are closely connected with the United States. In order to accomplish this, the Associations believe that the applicability of the requirement should be further limited by excluding from the definition of Covered QFC those master agreements where payments and deliveries may be made by or to a U.S. branch or agency but where the related transactions or assets are not booked into that U.S. branch or agency. Making payments or delivery to or from a U.S. branch or agency alone does not make a QFC sufficiently "closely connected to the United States" to raise the concerns about resolution that the NPR is intended to address. For example, under the NPR, U.S. contractual recognition rules would apply to a U.S. dollar-denominated QFC under an EU-law, multi-branch master agreement between an EU financial institution trading with EU-based counterparties and booking transactions in the EU. In practical terms, the requirement to include new contractual terms in QFCs where payment or delivery occur in the United States would require non-U.S. institutions to amend many additional QFCs booked abroad, many of which must also be amended to comply with contractual stay requirements of such non-U.S. institutions' home country regulatory regimes. This would impose a significant burden on non-U.S. Covered Entities with no benefit to U.S. financial stability,[21] as these QFCs would not be expected to be subject to a U.S. resolution regime. The Associations therefore urge the Federal Reserve to apply the requirements of the NPR to only those transactions under a multi-branch master agreement that are actually booked to a U.S. branch or agency that is a Covered Entity.

F. QFCs with a counterparty where the Covered Entity (or one of its affiliates that is a Covered Entity) has not entered into a post-effective date QFC with that specific counterparty

As noted above, under the NPR, a Covered Entity is required to amend all of its QFCs with a counterparty if the Covered Entity (or one of its affiliates that is a Covered Entity) enters into a QFC with the counterparty (*or an affiliate of that counterparty*) after the effective date of the Final Rule. The Associations believe that the scope of Covered QFCs should be limited such that the requirements in the NPR will not be triggered vis-à-vis a counterparty just because the Covered Entity (or one of its affiliates that is a Covered Entity) enters into a post-effective date QFC with an affiliate of that counterparty. That is, the Associations believe that the requirements should only be triggered if the Covered Entity (or one of its affiliates that is a Covered Entity) enters into a QFC with that <u>specific</u> counterparty on or after the effective date of the Final Rule. Requiring a counterparty of a Covered Entity to amend all of its QFCs with the Covered Entity (and all affiliates of the Covered Entity) because an affiliate of the counterparty

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[20] 81 Fed. Reg. at 29176.

[21] The NPR does not articulate a benefit to U.S. financial stability that would result from subjecting QFCs under multi-branch master agreements that are not booked to a U.S. branch or entity to the NPR's requirements, simply because payment or delivery could be made by or to the branch or agency. The Associations are not aware of any such benefits, but would appreciate the opportunity to analyze and respond to any purported benefits to U.S. financial stability of doing so.

entered into a new QFC with the Covered Entity (or an affiliate of the Covered Entity that is a Covered Entity) would place a significant burden on these counterparties. These counterparties are the global market participants and most are not themselves GSIBs. Therefore, they may not have necessarily been involved in the development of, or understand the requirements of, the NPR. Requiring one of these affiliates of a Covered Entity's counterparty to conform its QFCs with that GSIB group to the requirements of the NPR just because the Covered Entity and the counterparty entered into a new QFC would be a significant educational and compliance burden for the counterparty organization. Furthermore, not all of these entities use or are familiar with the BHC Act "control" definition – that is, they may not know that they are affiliates of a Covered Entity's counterparty – nor do these counterparties necessarily have the requisite level of control over trading at all of their affiliates to require affiliates to conform QFC agreements to the requirements of the NPR. As such, the Associations believe that the Final Rule should not require an affiliate of a Covered Entity's counterparty to amend its QFCs just because the counterparty and the Covered Entity enter into a new QFC after the effective date of the Final Rule.

G. Securities Underwriting, Subscription, Purchase, Placement Agency or Similar Agreements

The definition of QFC includes any "contract for the purchase, sale, or loan of a security."[22] This definition would appear to capture certain agreements that are not typically thought of as financial contracts that should be stayed upon the failure of an entity. In particular, the definition would appear to pick up underwriting, purchase, subscription and placement agency agreements relating to the offering and distribution of securities. These are agreements pursuant to which an issuer either agrees to sell securities to a group of underwriters or initial purchasers (frequently, in the United States, broker-dealers affiliated with banks) and the underwriters or initial purchasers undertake, in turn, to resell these securities to investors, or the issuer engages the placement agent to act as the issuer's agent to place the issuer's securities with investors. Any of the parties to such an agreement - an underwriter, initial purchaser, placement agent or issuer - could be a Covered Entity. Therefore, these agreements could be Covered QFCs for purposes of the NPR.

An underwriting, purchase, subscription or placement agency agreement typically contains an express provision stating that the agreement may be terminated if, on the settlement date for the sale of the securities, various conditions are not met. Among these conditions are that there has been no material adverse change in the financial position of the issuer that has not been disclosed to investors and that there has been no event rendering any of the issuer's representations and warranties in the agreement untrue or incorrect. If these conditions cannot be met, the underwriters, initial purchaser or placement agent have express termination rights under the underwriting, purchase, subscription or placement agency agreement, and they are not required to purchase or place the securities. These agreements are typically signed several days in advance of the anticipated settlement date for the sale of the securities, and reflect the parties' understanding of the financial condition of the parties at that point in time.

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[22] *See* 12 U.S.C. § 5390(c)(8)(D)(ii).

If the issuer has failed or is insolvent during the short period between the execution and settlement of an underwriting, purchase, subscription or placement agency agreement, it is unclear that the issuer could validly issue and deliver securities (*i.e.*, satisfy its obligations under the underwriting, purchase or subscription agreement). Furthermore, it is unclear how the underwriters, initial purchasers or placement agents could, in fact, purchase and resell or place the securities to investors, in the event of a failure of these conditions, without a violation of the U.S. or other applicable securities laws. Moreover, it is unclear that it would be in the public interest for the completion of a transaction contemplated by any of these agreements to occur in this situation.

The conditions to closing under these agreements may also include provisions permitting the underwriters, initial purchasers or placement agents to refuse to settle the transaction based on the failure of an affiliate of the issuer, which could be construed as a "cross-default" under the NPR. However, even the failure of an affiliate of the issuer (especially if it is a parent or significant operating subsidiary or affiliate of the issuer) may constitute a material adverse change in the issuer's circumstances requiring revisions to the disclosure relating to the securities and a change in the terms on which the securities are sold, assuming investors remain willing to purchase them at all.

Requiring underwriters, initial purchasers or placement agents to purchase or place securities of an issuer, notwithstanding the failure of the issuer or a significant operating affiliate of the issuer, may expose the underwriters, initial purchasers or placement agents to third-party liability (*e.g.*, third-party claims for securities fraud). The Associations do not believe that the NPR was intended to force underwriters, initial purchasers or placement agents to perform under such an agreement where performance could require them to violate the law or expose them to significant market risk (if they are unable to resell the securities) or to liability to parties other than a direct counterparty to the agreement.

These types of agreements typically do not contain explicit default rights relating to the underwriter's, initial purchaser's or placement agent's failure or financial condition, but do permit the issuer to exclude from the transaction any underwriter or initial purchaser that fails to purchase the securities on the settlement date with a very limited right (*i.e.*, if the failures constitute less than 10% of the total offering) for the issuer to require the other underwriters or initial purchasers to step up for the defaulting party.[23] Accordingly, any default right against an underwriter, initial purchaser or placement agent would be a performance-based default. Under the requirements of section 252.83 of the NPR, if these underwriting, purchase, subscription or placement agency agreements are Covered QFCs, the issuer would be prohibited from exercising default rights against the underwriters, initial purchasers or dealers to the extent it would be prohibited from doing so under OLA or the FDIA. However, the exercise of the performance-based default right of the issuer should not be prohibited under OLA or the FDIA as it is not necessarily related directly or indirectly to the insolvency or failure of a Covered Entity.

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[23] Subscription and similar agreements in non-U.S. jurisdictions, such as the United Kingdom, typically do not provide a default right of termination to an issuer because the dealers typically subscribe on a joint and several basis.

For these reasons, the Associations request that the Federal Reserve exclude from the scope of Covered QFCs underwriting, purchase, subscription and placement agency agreements (or any other similar agreement) relating to the offering and distribution of securities.

H. QFCs as to which the Covered Entity is only an agent, and, in which the default rights under the QFC do not relate to a Covered Entity

With respect to QFCs where a Covered Entity is acting as agent, the NPR provides that its requirements will apply to these QFCs to the extent that the transfer of the QFC relates to the Covered Entity or the default rights relate to the Covered Entity or an affiliate of the Covered Entity.[24] However, as written, this would mean that the requirements of the NPR could apply even if the default rights in the QFC relate to an affiliate of the Covered Entity that is not itself a Covered Entity. The Associations believe that this should be modified in the Final Rule to make clear that the default rights must relate to an affiliate of the agent Covered Entity that is itself a Covered Entity. The Associations believe that the fact that a Covered Entity acts as agent with respect to a QFC should not be sufficient to cause such QFC to become a Covered QFC and, therefore, do not bear a sufficient connection to U.S. financial stability to warrant the burden and cost of compliance.[25]

IV. The Federal Reserve should provide additional clarity with respect to certain provisions in the NPR

The Associations believe that several aspects of the NPR would benefit from additional clarity. Therefore, the Associations respectfully request that the Federal Reserve include the clarifications set forth below in the Final Rule.

A. The scope of the exclusion for CCP-cleared QFCs should be clarified to include QFCs entered into with other FMUs, and to include ancillary and underlying agreements to any such QFC

The NPR contains an express carve out for QFCs to which a central counterparty ("**CCP**") is a direct counterparty. A CCP is "a counterparty (for example, a clearing house) that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts."[26] However, QFCs may be entered into with, or settled or processed through, an FMU other than a CCP. Such QFCs are with, or become subject to the rules of, an FMU even though they are not necessarily "cleared" through a CCP and even though the CCP or FMU may not be a direct counterparty to the transaction. As with QFCs cleared through a CCP, there are key differences between these QFCs subject to the rules of an FMU and standard over-the-counter QFCs. In particular, these QFCs are generally <u>not</u> bilaterally negotiated, and they are typically subject to a standardized rulebook. Covered Entities would not be able to modify the terms of these rulebooks without at least the consent of the FMU (and

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[24] *See* NPR § 252.83(a)(3), § 252.84(a)(3).

[25] The Associations support the proposed change to the language of the NPR set forth in the ISDA Letter.

[26] *See* 12 C.F.R. § 217.2.

potentially other members of the FMU and the FMU's regulators as well). Given the similarity of QFCs subject to the rules of, or entered into with, an FMU and QFCs that are entered into with a CCP and the related considerations with respect to applying the requirements of the NPR, the Associations believe that the requirements of the NPR should not apply to any QFC that is cleared, processed or settled through an FMU (or the facilities thereof), and was otherwise entered into pursuant to, or that becomes subject to, the rules of, the FMU to the extent compliance with the Final Rule would require an amendment or modification to the FMU's rulebook, as well as any other QFC that is entered into with an FMU as counterparty. The Final Rule should include this carve out, which the Associations believe is consistent with the intent of the NPR.

In addition, in FMU sponsored membership programs, QFCs in scope for the proposed exclusion may be accompanied by agreements between the sponsored and sponsoring firm that are integral to or form the underlying basis of the excluded QFC but to which the FMU may or may not be a direct party. The Final Rule should reflect that such agreements, when entered into in connection with an FMU sponsored membership program, are, like the associated QFC, excluded from the definition of Covered QFCs.

B. Both legs of a cleared QFC should be treated in the same manner

The NPR excludes from its requirements QFCs to which a CCP is a party, as the CCP's rulebook may permit the CCP to exercise its default rights if it determines that its own stability may be at risk as a result of a Covered Entity's failure. This exclusion appears to address the U.S. clearing model, where a Covered Entity may enter into a single QFC with a CCP on behalf of, and as agent for, its client. However, in a number of jurisdictions, a Covered Entity that clears a QFC for its customer would enter into one transaction with a CCP, and a matching, back-to-back transaction with its customer. As proposed, the NPR would not permit the termination of this matching, back-to-back transaction. The Associations respectfully suggest that the Final Rule provide that the matching, back-to-back QFC may be terminated upon, and simultaneously with, the termination of the QFC between the CCP and the Covered Entity, in accordance with the rules of the CCP and the agreement between the Covered Entity and its customer.

C. Parties may exercise certain default rights even during the stay period under section 252.84 of the NPR

The Associations request that the Final Rule confirm that a counterparty of a Covered Entity is permitted under section 252.84 of the NPR to exercise its default rights without delay in accordance with the terms of the contract in the event of the direct party not satisfying a payment or delivery obligation pursuant to the Covered QFC or another contract between the same parties that gives rise to a default right in the Covered QFC, as well as the other events enumerated as "general creditor protections" under section 252.84(e) of the NPR, even if such failure occurs during the stay period described in section 252.84(h) of the NPR.

D. Clarify the scope of the carve outs for creditors protections in the NPR

Section 252.84(g) of the NPR applies certain protections when, "with respect to a covered direct QFC that is supported by a covered affiliate credit enhancement, the covered direct QFC and the covered affiliate credit enhancement may permit the exercise of a default right that is related, directly or indirectly, to the covered affiliate support provider after the stay period if it describes additional creditor protections for QFCs supported by a credit enhancement provided by an affiliate that is also a Covered Entity." Under this requirement, counterparties to all supported QFCs would be stayed from exercising default rights during the "stay period." After the stay period, counterparties of such supported QFCs may exercise cross-defaults if certain specific creditor protection conditions are not met.

However, based on the plain text of this section, the additional creditor protections under section 252.84(g) of the NPR only apply to QFCs supported by a credit enhancement provided by a "covered affiliate support provider" (*i.e.*, an affiliate that is a Covered Entity). With respect to QFCs with a non-U.S. GSIB group, many of the Covered Entity members of the GSIB group will have their QFCs supported by a non-U.S. affiliate that is *not* a Covered Entity. As currently written, the non-U.S. affiliate credit support provider would not be able to rely on the carve outs in section 252.84(g) of the NPR. We do not believe that the Federal Reserve intended to apply these carve outs disparately based on the location of the affiliate credit support provider. The Federal Reserve noted that these rights – exercisable by a counterparty of a Covered Entity in certain situations when the Covered Entity's credit support provider no longer is able to adequately provide credit support – do "not undermine an SPOE resolution of a GSIB."[27] The Associations do not believe that this rationale differs because the credit support provider is located in the U.S. or abroad. The Associations therefore urge the Federal Reserve to create parity of treatment for all counterparties that receive credit support from an affiliate of a Covered Entity.[28]

In addition, the Associations believe that the Federal Reserve should clarify that the limitations on creditors rights against the Covered Entity do not limit the rights of the creditors of the credit support provider against the credit support provider where that non-U.S. credit support provider is a non-U.S. entity. In particular, the creditors of a non-U.S. credit support provider should be permitted to exercise any and all rights against that non-U.S. credit support provider that they could exercise under the non-U.S. resolution regime applicable to that non-U.S. credit support provider. Furthermore, the Associations believe that the Federal Reserve should clarify that a QFC of a Covered Entity (where there is a non-U.S. credit support provider for the Covered Entity) complies with the requirements in the NPR to the extent that the Covered Entity

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[27] 81 Fed. Reg. 29180.

[28] An identical issue exists under the plain language of section 252.84(e)(3) of the NPR ("Notwithstanding paragraph (b) of this section, a covered direct QFC and covered affiliate credit enhancement that supports the covered direct QFC may permit the exercise of a default right with respect to the covered QFC that arises as a result of … The <u>covered affiliate support provider</u> or transferee not satisfying a payment or delivery obligation pursuant to a covered affiliate credit enhancement that supports the covered direct QFC." (emphasis added)). The Associations request that the Federal Reserve clarify this provision in the same manner.

has adhered to the jurisdictional module for the ISDA Stay Protocol for the jurisdiction of the non-U.S. credit support provider.

Accordingly, the Associations respectfully ask the Federal Reserve to clarify the requirements of the NPR in accordance with the above.

E. Clarify the scope of section 252.83(b)(2)

In addition, the text of section 252.83(b)(2) of the NPR does not appear to match the intended operation of this provision as described by the Federal Reserve in the preamble to the NPR. This section of the NPR reads as follows (emphasis added):

> (2) Default rights with respect to the covered QFC that may be exercised against the covered entity are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regimes if the covered QFC was governed by the laws of the United States or a state of the United States <u>and the covered entity were under the U.S. special resolution regime</u>.

Based on a plain reading of this requirement, it would appear that the underlined language requires that the default rights can be exercised only if they could also be exercised if the Covered Entity were to be subject to proceedings under a U.S. special resolution regime. The result of this reading would be that stays on default rights would apply even when the Covered Entity is not subject to a U.S. special resolution regime proceeding. The Associations believe that this section of the NPR is intended to protect the exercise of a default right only as permitted under the U.S. special resolution regime, which is consistent with statements in the preamble to the NPR.[29]

Further, it is not clear how this provision would apply to cross-default rights. The provisions of section 252.83(b)(2) of the NPR would appear to apply only with respect to the actual parties to the specific covered QFC (*e.g.*, in the case of an ISDA Master Agreement and a related guarantee, this provision would appear to apply to the guarantor with respect to the related guarantee but not with respect to the related ISDA Master Agreement). Based on the Federal Reserve's discussion in the preamble of cross-default rights and the SPOE resolution strategy, we also believe that this was not the intent of section 252.83 of the NPR.[30]

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29 In the preamble to the NPR, the Federal Reserve stated that the purpose of section 252.83 is to provide certainty that all Covered QFCs "would be treated the same way <u>in the context of a receivership of a covered entity</u> under the Dodd-Frank Act or the FDI Act." 81 Fed. Reg. at 29178 (emphasis added).

30 *See, e.g.*, 81 Fed. Reg. at 29175 (stating that the requirements in the NPR would apply to subsidiaries of GSIBs because "it is necessary to ensure that those subsidiaries or affiliates do not enter into QFCs that contain cross-default rights that the counterparty could exercise based on the holding company's or affiliate's entry into resolution (or that any such cross-default rights are stayed when the holding company enters resolution).").

Accordingly, the Associations respectfully ask the Federal Reserve to clarify the requirements of this provision in accordance with the above.

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The Associations appreciate the opportunity to submit these comments and would like to reiterate their support for the objectives of the NPR and requirements therein generally. We look forward to continuing to work together to achieve the ends that the NPR seeks. If you have any questions, please contact John Court (202-649-4628; John.Court@theclearinghouse.org) or Carter McDowell (202-962-7327; cmcdowell@sifma.org).

Respectfully submitted,

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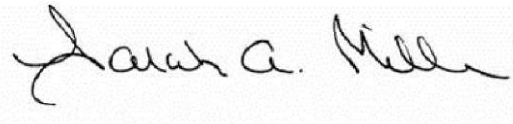

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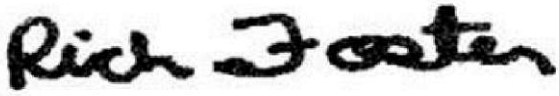

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ANNEX A

The Clearing House

The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Association L.L.C. is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system. Its affiliate, The Clearing House Payments Company L.L.C., owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by building a new, ubiquitous, real-time payment system. The Payments Company is the only private-sector ACH and wire operator in the United States, clearing and settling nearly $2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume.

American Bankers Association

The American Bankers Association is the voice of the nation's $16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $12 trillion in deposits and extend more than $8 trillion in loans.

Financial Services Forum

The Financial Services Forum is a nonpartisan financial and economic policy organization comprised of the chief executives of some of the largest and most diversified financial institutions with business operations in the United States. The Forum works to promote policies that enhance savings and investment in the United States and that ensure an open, competitive, and sound global financial services marketplace.

Financial Services Roundtable

As *advocates for a strong financial future*™, the FSR represents 100 integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for $98.4 trillion in managed assets, $1.1 trillion in revenue, and 2.4 million jobs.

The Institute of International Bankers

The Institute of International Bankers is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of internationally headquartered banking and financial institutions from over 35 countries around the world doing business in the United States. The IIB's mission is to help resolve the many special legislative, regulatory, tax and compliance issues confronting internationally headquartered institutions that engage in banking, securities and other financial activities in the United States. Through its advocacy efforts the IIB seeks results that are consistent with the U.S. policy of national treatment and appropriately limit the

extraterritorial application of U.S. laws to the global operations of its member institutions. Further information is available at www.iib.org.

Securities Industry and Financial Markets Association

The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.