CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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

Re: Single-Counterparty Credit Limits for Large Banking Organizations, RIN 7100-AE 48, Docket No. R-1534

Dear Mr. de V. Frierson and To Whom It May Concern:

The U.S. Chamber of Commerce ("Chamber")[1] 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 extensively on capital, leverage, and liquidity rules issued by the Board of Governors of the Federal Reserve (the "Federal Reserve" or the "Board") and other banking regulators in the past, with a particular focus on the impact of these regulations on the ability of non-financial businesses to raise the resources needed to grow and operate, as well as to mitigate short- and long-term risks.[2]

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[1] 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 users, preparers, and auditors of financial information.

[2] *See* June 14, 2011 letter from the Chamber to Federal Reserve Chairman Ben Bernanke on G-SIFI surcharges, October 22, 2012 comment letter to U.S. banking regulators on proposed Basel III regulations, September 19, 2013 letter to the BCBS on the Revised Basel III leverage ratio framework, September 23, 2013 letter to U.S. banking regulators on enhanced supplementary leverage ratio standards, January 31, 2014 letter to U.S. banking regulators on liquidity coverage ratio rules, January 31, 2014 coalition letter to U.S. banking regulators on liquidity coverage ratio rules, May 28, 2014 letter to NCUA on risk based capital, September 11, 2014 letter to Federal Reserve on Capital Plan and Stress test rules, September 19, 2014 letter to Bank of International Settlements on The Net Stable Funding Ratio, letter of February 11, 2016 on Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, and March 21, 2016 letter to Federal Reserve on Framework for Countercyclical Capital Buffer.

The Federal Reserve has taken important steps with its proposed rule to set limits on the credit exposure of domestic or foreign bank holding companies to unaffiliated counterparties (the "Proposed Rule") to make this reproposal more workable, especially with respect to its treatment of derivatives and raising of exposure limit thresholds. However, despite these improvements, we again find a lack of consideration for the impact of the Proposed Rule on ability of financial institutions to provide loans to businesses of all sizes.

Specifically, the Proposed Rule may significantly curtail lending to small and mid-size businesses given the operational difficulty of aggregating other potential counterparty exposures as envisioned by the Board. The Proposed Rule would also significantly impact the health of the securitization markets through its various "look through" requirements without a readily apparent benefit to financial stability. Credit facilities offered every day to businesses would also come under serious scrutiny under the rule, despite the Federal Reserve's preexisting authority to identify the rare situations where a credit facility might pose a systemic risk. Finally, the Proposed Rule seems to make certain arbitrary choices with respect to the treatment of global systemically important banks ("G-SIBs") and foreign banking organizations ("FBOs") and their required exposure limits.

In short, without significant simplification, we fear that the Proposed Rule will make it cost-prohibitive for affected financial institutions to continue servicing many of their clients, leaving small and medium-sized businesses with less access to lenders and potentially impacting the already fragile health of our securitization markets. Such simplification can be achieved without impacting the efficacy of the Proposed Rule.

This comment letter focuses on (1) operational difficulties with respect to the definitions of "covered company" and "counterparty" that will negatively impact lending, as well as the potential for considerable disruption to the securitization markets because of required due diligence requirements under the Proposed Rule; (2) needed improvements to the treatment of securities financing transactions ("SFTs") and other off-balance sheet items, including lines of credit; (3) the application of the Proposed Rule to G-SIBs and FBOs, where we reemphasize the statutory obligation of the Federal Reserve to consider the issues raised in this letter and potential alternatives to the Proposed Rule in their cost-benefit analysis of the Proposed Rule (including whether the cumulative impact of other regulatory reforms counsels against

the choices made by the Board in its Proposed Rule); and (4) the necessity for an extension of the proposed compliance period under the Proposed Rule.

Our concerns are discussed in greater detail below.

Discussion

I. Definition of "Covered Company," "Counterparty," and Look-Through Requirements for Securitizations

Definition of Covered Company

A covered company is broadly defined as any bank holding company, other than an FBO, with more than $50 billion in total consolidated assets and all of its subsidiaries. Consequently, in order to comply with the Proposed Rule, financial institutions must identify the subsidiaries that should be included in its credit exposure calculation. However, in making that determination, the Federal Reserve has opted to use the Bank Holding Company Act of 1956 (the "BHCA") definition of "control," which includes a facts-and-circumstances "controlling influence" test.

We strongly believe that using the controlling influence test will lead to significant complexity and difficulty in determining which of a covered company's subsidiaries should be included in the credit exposure calculation. For example, the Federal Reserve's policy statement on equity investments in banks and bank holding companies explains that a "controlling influence" means a "significant but less than absolute control in fact" of a banking organization.[3] This test has evolved into determining whether there are limitations on director interlocks, the exact combinations of voting and nonvoting shares held by an investor, and even discussions that minority investors may have had with management of a banking organization.

[3] *See* Board of Governors of the Federal Reserve System, Policy Statement on Equity Investments in Banks and Bank Holding Companies (the "Policy Statement"), *available at* https://www.federalreserve.gov/newsevents/press/bcreg/bcreg20080922b1.pdf.

While these tests may be appropriate for the purposes of the BHCA, requiring this same level of scrutiny for purposes of calculating a credit limit exposure is inappropriate. The lack of operational control resulting from a minority investment would make it difficult for a covered company to control its credit limit exposure through such a subsidiary; more importantly, the fact that the minority investment is, in fact, limited, would most likely render the increased amount of credit exposure to be minimal.

We instead echo the recommendation made by others to use a regulatory capital consolidation measure, rather than the BHCA definition of control, for purposes of defining a covered company. The regulatory capital consolidation measure has the benefit of clarity and is also designed to measure potential risk to a bank holding company and its subsidiaries, thus aligning credit exposure with preexisting capital requirements. Finally, we believe that the Federal Reserve's preexisting supervisory authority to address potential evasion of the Proposed Rule would be sufficient to address any remaining concerns with minority investment.

Definition of Counterparty

One of the most troubling aspects of the Proposed Rule is its definition of "counterparty," which applies not only to individual counterparties but also certain related counterparties. Our comments specifically focus on the "economic interdependence" and "control relationship" tests. Both of these approaches sweep in a broad array of institutions that may only have a tangential relationship to a borrower, particularly given the lack of a *de minimis* threshold for the control relationship test.

Consequently, the Chamber believes that the associated due diligence and monitoring costs, particularly for those covered companies that are required to report their credit limit exposures to the Federal Reserve on a daily basis, will rise significantly. They may become so onerous that covered companies may begin reconsidering whether these costs outweigh the benefit of lending to borrowers that may not have readily available information – which may often be the case for smaller and mid-size borrowers.

A. Aggregation and Economic Interdependence

A counterparty is defined as all persons of which a company owns 25 percent or more of the (1) voting power or (2) total equity or (3) with which such company is consolidated for financial reporting purposes.[4] This test is significantly overbroad and captures several companies that are not, in fact, "economically interdependent," including minority investments in joint ventures. While we appreciate that this standard is a bright-line test, the inclusion of voting investments at the 25 percent threshold is not considered an appropriate standard for measuring control outside of the banking context. It should also be remembered that those counterparties will, in the vast majority of cases, be only liable for their investment in a minority investment and typically do not serve as a "source of strength" (as is sometimes the case in the banking law context).

Moreover, including companies in which a counterparty has a 25 percent equity but potentially no voting interest opens up a great deal of complexity in aggregating exposure to a potential counterparty. Many corporate vehicles permit limited or passive partners to retain equity in an investment without necessarily granting them voting rights—particularly in the start-up context and in other endeavors critical to the growth of our economy. Requiring covered companies to limit their potential exposure to a borrower on the basis of these types of relationship would create a chilling effect on additional investment in these types of investments and could also require the disclosure of potentially sensitive information. Indeed, this requirement would contradict Congress' intention to increase venture capital and private equity capital investment through the Jumpstarting Our Business Start-Ups Act.

Accordingly, we strongly urge the Board to eliminate the proposed requirement of aggregating credit limit exposure in cases where there is a 25 percent or less equity interest in a company in the absence of a controlling voting interest. A sufficient voting interest should be set at least at 50 percent for purposes of determining control. Both of these concerns would be satisfied if the Federal Reserve were to adopt a financial reporting consolidation test for the definition of "counterparty," rather than the economic interdependence test set out in the Proposed Rule.

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[4] Section 252.71(c)(2). *See also* Section 252.72(d).

B. Aggregation and "Control Relationship"

We reiterate our concerns above with respect to the "controlling influence" test for covered companies with respect to the "control relationship" test for counterparties. Again, we believe that the lack of operational control, as well as the intensive facts and circumstances analysis that would be required to determine a "controlling influence," makes this test inappropriate for purposes of measuring a counterparty's potential exposure to other third-parties.

More troubling, however, is the potentially limitless due diligence that would be required under the "control relationship" test, particularly because there is no *de minimis* voting or equity interest threshold (as opposed to the economic interdependence test, which has a materiality threshold of 5 percent). Instead, the Proposed Rule will require counterparties to essentially prove that there is no control relationship between them and every investment made by such company. Given that covered companies will be highly incentivized to remain well below their credit limit exposure thresholds, we believe that typical lending to counterparties will necessarily require a considerable amount of additional due diligence. This will extend to information that is well beyond the typical credit intake process and, again, may require disclosure of certain sensitive information that is not publically available.

We understand the Federal Reserve's goal of measuring potential credit exposure accurately, as well as addressing any potential evasion beforehand. However, the proposed aggregation concepts for counterparties go well beyond what is necessary to measure such limits. Instead, the counterparty aggregation proposals will needlessly tie up capital allocation by forcing covered companies to move away from lending to counterparties that cannot quickly and continuously provide information on exposures to third parties.

Consequently, we again advocate for a financial reporting consolidation standard for the purpose of defining a counterparty under the Proposed Rule. The simplicity of this approach, as well as its consistency with both traditional concepts of control in the corporate context and its alignment with international standards[5] would

[5] *See* Basel Committee on Banking Supervision, *Supervisory Framework for Measuring and Controlling Large Exposures*, available at http://www.bis.org/publ/bcbs283.pdf.

continue to provide access to credit for borrowers that would not be able to readily comply with the Proposed Rule's requirements.

Impact on Securitization Markets

Finally, for many of the same reasons listed above, we believe that many of the anti-evasion requirements that the Proposed Rule applies in the context of securitizations to covered companies with more than $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposures (a "large covered company") may significantly harm those markets, particularly for retail and receivable asset-backed securities and commercial mortgage-backed securities.

The Proposed Rule requires a large covered company to calculate its gross credit exposure to each issuer of assets held by a securitization vehicle, investment fund, or other special purpose vehicle ("SPV") if such covered company cannot demonstrate that its gross credit exposure to each issuer, based on the exposure from the underlying investment in an investment vehicle, is less than 0.25 percent of a large covered company's capital. While the 0.25 percent threshold is welcomed, we believe that this "look through" requirement can be improved in order to avoid exceedingly difficult due diligence requirements. Specifically, this could be done by:

- Eliminating the requirement with respect to all retail securitizations, given the extreme low probability that any single individual would have a credit exposure that would raise systemic concerns;

- Clarifying that the look-through requirements only need to be satisfied when exposures <u>exceed</u> a 0.25 percent threshold, permitting reliance on prospectus information when conducting such a look-through, and reducing the frequency of such look-throughs from daily to periodic or other "event dates";

- Eliminating the requirement that exposures be attributed to a "single, unknown counterparty" when a large covered company is unable to identify each issuer of assets of a securitization vehicle, particularly if this requirement extended to multiple securitization vehicles and required all such exposures to be aggregated in one, unknown counterparty; and

- Removing the requirement for a large covered company to identify other potential third parties whose failure or distress would result in a loss of value of a covered company's investment or exposure in a securitization vehicle, investment fund, or SPV. This concern is particularly acute given the potentially limitless universe of third parties that could impact such an investment or exposure, what type of relationship between the investment and a third party would cause such a loss, and whether such loss would, in fact, be material.

In considering these potential changes, we reemphasize the importance of the securitization markets to the economy, by providing much needed resources to companies seeking to raise capital. Additionally, coupled with appropriate oversight, securitization provides a cost-effective method of credit risk management, permitting banks to diversify their holdings in an efficient manner. The Proposed Rule, however, would have the opposite effect and would encourage large covered companies to limit their investment to particular sectors or companies, cutting off access to capital and potentially concentrating their credit risk.

II. Impact on Securities Financing Transactions and Credit Facilities

While the reissued Proposed Rule made significant and positive changes with respect to the calculation of derivatives exposure, the same cannot be said with respect to exposure measurements for SFTs and credit facilities upon which businesses of all sizes rely. Consequently, we strongly urge you to significantly amend these measurements and align them with more risk-sensitive requirements, such as the risk-based capital rules.

Securities Financing Transactions

We echo the comments of others in noting that the approach taken by the Board in measuring SFT exposures is particularly blunt and severely overstates

exposures.[6] Securities lending is extremely important to the functioning of our capital markets and helps support market liquidity by permitting securities lenders to temporarily transfer securities to securities borrowers, fully backed by collateral or a financial commitment, in exchange for incremental revenue. This activity helps promote efficient market functioning and price discovery in key areas, such as providing high-quality assets for the purposes of clearing, complying with rules such as the liquidity coverage ratio, short selling, securities settlement, and providing incremental but important revenue to institutional investors, including mutual funds and pension funds. Given the importance of these activities, a carefully tailored approach to measuring SFT exposures under the Proposed Rule is strongly warranted.

In this respect, we strongly urge the Federal Reserve to permit using any methodology permitted for use under risk-based capital purposes for the purpose of measuring SFT exposures under the Proposed Rule. This would be a significant improvement over across-the-board haircuts applied to loan and collateral positions under the Proposed Rule.

Treatment of Credit Facilities

Like SFT exposures, the Proposed Rule's treatment of unfunded off-balance sheet commitments, which include credit facilities that businesses of all sizes use, is particularly overbroad and fails to recognize the Federal Reserve's preexisting supervisory authority to identify instances where such unfunded commitments may pose a systemic risk.

In particular, we take issue with the credit conversion factor ("CCF") applied to a covered company's exposure in these circumstances, especially when compared to the standardized approach under the risk-based capital rules, which differentiate between the maturity of a commitment and whether it is or is not unconditionally cancelable. This across-the-board treatment ignores the importance of many types of commitments made to borrowers, including lines of credit that are often the first source of financing for a growing business.

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[6] *See* Comment Letter of The Clearing House Association L.L.C., the American Bankers Association, the Financial Services Roundtable, and the Securities Industry and Financial Markets Association, dated June 3, 2016.

While it is unlikely that a business of this size would necessarily cause a covered company to exceed its credit limit exposure, we are concerned that a needlessly high CCF will limit a covered company's willingness to provide such funding to companies in general. This concern is compounded by the fact that such exposure may only be reduced if a used portion of a credit line is secured by specifically enumerated collateral, which would specifically exclude investment grade debt securities, publically-traded equity securities, and publically-traded bonds. We strongly urge the Board to allow any eligible collateral under the Proposed Rule to reduce an exposure in these circumstances.

Finally, staff at the Federal Reserve have acknowledged the importance of maintaining strong bank lines of credit, particularly when companies rely on those lines of credit during liquidity shocks or economic crises.[7] Given this acknowledgement, we strongly believe that a risk-based approach to measuring exposures of credit facilities is strongly supported.

III. Application of Proposed Rule to G-SIBs and FBOs

Finally, we question the Board's decision to impose more onerous credit limits on majored covered companies and major counterparties, which sets a credit limit of 15 percent of tier 1 capital between G-SIBs and others G-SIBs or nonbank financial companies regulated as systemically important financial institutions designed by the Board, especially given the numerous regulatory requirements that have recently been finalized, proposed, or are forthcoming that regulate the quality and quantity of capital required by these institutions. The Chamber continues to believe that such limits should be carefully considered in the context of their impact on job creation and the economy, and that a cumulative impact assessment is needed to properly address these issues.

Moreover, we also question why the Proposed Rule also sets credit exposure limits for FBOs, given that they are already subject, or will be subject, to credit limit

[7] *See* Berrospide, Jose M., and Ralf R. Meisenzahl (2015). "The Real Effects of Credit Line Drawdowns," Finance and Economic Discussion Series 2015-007. Board of Governors of the Federal Reserve System (U.S.). *available at* http://dx.doi.org/10.17016/FEDS.2015.007

exposure regulation by their home country supervisor. These concerns are more thoroughly elaborated below.

Major Covered Company and Major Counterparty Limits

We strongly believe that the higher 15 percent limit on exposures between major covered companies and major counterparties is unnecessary given the amount of capital that has been required to be raised under Basel III and other regulatory capital rules. Required bank capital has more than doubled since the financial crisis, with Basel III minimum bank capital requirements rising from 8 percent to up to 15.5 percent of risk-weighted assets when all surcharges are included.[8] This figure, however, does not include the amount of capital required under reforms such as total loss-absorbency capacity debt requirements, or the limitations on the types of assets that can be held by a bank under the liquidity coverage ratio or net stable funding ratio.

In previous comment letters, we have called for a comprehensive study of various regulatory initiatives as well as the impacts of those initiatives on the broader global economy and the capital formation system that is the linchpin for growth.

We believe that such studies are critical to understanding the impact of capital and leverage requirements on capital formation and urge the Federal Reserve to conduct a similar, comprehensive analysis. The same concern also applies to the Proposed Rule and its credit limit exposure framework, which may have the real effect of limiting access to credit to businesses of all sizes for the reasons listed above. A review of the initiatives impacting business capital formation illustrates:

- The Leverage Ratio Framework materially increases the minimum capital requirement by product relative to Basel III. Additionally, the Leverage Ratio Framework and the proposed Net Stable Funding Ratio penalizes many low-risk activities that may harm the ability of non-financial businesses to access markets to prudently mitigate risk or manage cash and liquidity;

[8] *See* Pg. 5, J. Daghar, G. Dell'Ariccia, L. Laeven, L. Ratnovski, and H. Tong, IMF Staff Discussion Note, *Benefits and Costs of Bank Capital* (Mar. 2016), *available at* https://www.imf.org/external/pubs/ft/sdn/2016/sdn1604.pdf.

- The Liquidity Coverage Ratio creates disincentives for financial institutions to offer certain products and services to businesses even though those activities were not the cause of the financial crisis;

- G-SIB Capital Surcharges will force large internationally active banks to withdraw additional capital from productive capital formation streams;

- The complex regulatory regimes envisioned by the final Volcker Rule, and the proposed Vickers and Bank Structural Reform rules, are expected to impact the ability of non-financial businesses to enter the debt and equity markets by raising costs and creating barriers of entry to the capital markets;

- Money Market Fund reforms will harm the ability of non-financial businesses to access the short-term commercial paper markets and manage cash; and

- If the Volcker, Vickers and Bank Structural Reform, and Money Market Fund reforms hamper capital formation, the next alternatives are commercial lines of credit; however, Basel III creates disincentives for banks to provide businesses with commercial lines of credit.

- The TLAC proposal will immobilize billions of dollars' worth of capital through its long-term debt requirements while requiring banks to hold many multiples of the capital needed in several of the Federal Reserve's stress testing scenarios.

- The Countercylical Capital Buffer requirement requires G-SIBs to raise an additional cash buffer when the Board believes there is excess credit growth in a particular sector of the economy, which has already sidelined productive capital.[9]

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[9] This list is by no means an exhaustive list of regulations and capital initiatives that should be reviewed with such a study. This list is illustrative of the types of initiatives that should be studied.

The combination of all of these initiatives could lead to an underperforming financial sector and create barriers to capital formation. The inability of businesses to be able to engage in normal capital formation activities, efficient cash management and effective risk management will raise costs and create inefficiencies, adversely impacting economic growth and financial stability.

Therefore, we believe that the Federal Reserve should conduct a comprehensive study to determine: (1) how all of these initiatives will interact and work together; (2) determine the impacts of these initiatives upon the broader macro-economy; and (3) use modeling techniques to "war-game" these new regulatory structures identify faults and shape comprehensive fixes. This information will be invaluable to the finalization of the Proposed Rule and would help mitigate potential unintended consequences with the other initiatives discussed above, as well as how the final rule should be molded to avoid potential harm to the ability of businesses to raise the resources needed to expand and operate.

Additionally, the Federal Reserve is subject to the Regulatory Flexibility Act ("RFA") and the Paperwork Reduction Act ("PRA"). The RFA requires assessment of the economic effect of regulations on small business and consideration of less burdensome alternatives. The PRA requires assessment of the paperwork burden on small entities and ways to reduce or mitigate it.

The Federal Reserve must also comply with the Small Business Regulatory Enforcement Fairness Act ("SBREFA"). Among other things, the portion of SBREFA known as the Congressional Review Act states that rulemaking agencies must submit to GAO, and make available to each house of Congress, "a complete copy" of any cost-benefit analysis prepared for a final rule for which such an analysis is performed.[10]

The Federal Reserve is also subject to Riegle Community Development and Regulatory Improvement Act ("Riegle Act," 12 U.S.C. §4802(a)). 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

[10] 5 U.S.C. 801(a)(1)(b)(i))

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."

Although the Federal Reserve is an independent agency, it has also avowed that it will seek to abide by Executive Order 13563. The Federal Reserve recently stated that it "continues to believe that [its] regulatory efforts should be designed to minimize regulatory burden consistent with the effective implementation of [its] statutory responsibilities."[11] As recently as October 24, 2011, the Federal Reserve wrote a letter to the Government Accountability Office acknowledging the need to engage in a cost-benefit analysis and asserting that the Federal Reserve's use of such an analysis, since 1979,[12] has mirrored the provisions of regulatory reform as articulated in Executive Order 13563.[13]

The CCMC strongly recommends that the Federal Reserve establish a baseline for cost-benefit and economic analysis using the blueprint established by Executive Orders 13563 and 13579, in addition to other requirements they must follow.[14] Doing so would allow meaningful, cumulative analysis that would result in a more coherent final rule with fewer harmful, unintended consequences for the American economy.

Executive Order 13563 places upon agencies the requirement, when promulgating rules to:

1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to justify);

2) Tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

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[11] November 8, 2011, letter from Chairman Ben Bernanke to OIRA Administrator Cass Sunstein.
[12] Board of Governors of the Federal Reserve System, Statement of Policy Regarding Expanded Rulemaking procedures, 44 Fed. Reg. 3957 (1979)
[13] *See* 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.
[14] Executive Order 13579 requests that independent agencies follow the requirements of Executive Order 13563.

3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages; distributive impacts; and equity);

4) To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and

5) Identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made to the public.[15]

Additionally, Executive Order 13563 states that "[i]n applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible."

Conducting the rulemaking and its economic analysis under this unifying set of principles will facilitate a better understanding of the rulemaking and its impact and give stakeholders a better opportunity to provide regulators with informed comments and information.

Foreign Banking Organization Rules

The Proposed Rule does not distinguish between FBOs subject to credit limit exposure regimes similar to the Proposed Rule and those that are not, resulting in a complex set of reporting requirements for FBOs to both their home country supervisor and the Board. Aside from the difficulties in reporting to different supervisors and potential differences in the information reported, we believe that

[15] Executive Order 13563

significant compliance concerns may arise when a home regulator and the Board disagree on how a credit limit exposure is calculated. This is particularly true given that compliance requirements for an FBO would be based on global total consolidated assets, not the size of its U.S. operations, which may put regulators at odds.

Moreover, the Proposed Rule's requirement to set and monitor exposures at two different sub-consolidated levels – at the intermediate holding company level and at the combined U.S. operations of an FBO – is also at odds with international approaches and will results in duplicative and unnecessary reporting to the Board. Breaching a credit exposure limit at either level would also result in a "cross trigger" that would prevent additional credit transactions with the counterparty in question, which raises several concerns about the Proposed Rule's extraterritorial effect.

Consequently, we believe that FBOs should be exempt from the Proposed Rule and that the Board work closely with prudential regulators located in foreign countries to obtain and assess any information necessary for purposes of the Proposed Rule.

IV. Extension of Compliance Period and Creation of Cure Period

Finally, given the operational complexity of the Proposed Rule as elaborated above, we believe that it is appropriate for the Board to extend the compliance period with the Proposed Rule to at least two years for all covered companies, based on the finalization of the reporting forms rather than the effective date of the Proposed Rule. In addition to developing new systems to track credit exposure limits, covered companies will need to discuss potential changes in lending with their customers over a period of time, and such customers should be afforded the opportunity to evaluate those relationships with more than a year's notice. Such counterparties will need to be ready to monitor and provide the information required under the Proposed Rule on a continuous basis, which may also require significant restructuring at the level of the counterparty.

Conclusion

We have highlighted several concerns with the Proposed Rule and its impact on the capital markets. Overall, while we appreciate the steps the Board has taken to make the rule more workable, we believe there is a significant need for simplification, especially with regard to the definition of covered company and counterparty, in order to safeguard essential sources of credit to our economy. Our concern also reemphasizes the need for a rigorous cost-benefit analysis to determine the impact of heightened capital and liquidity requirements on covered companies and their counterparties. We thank you for your consideration of these comments and would be happy to discuss these issues further with you or your staff.

Sincerely,

Tom Quaadman