June 25, 2018

Via Electronic Submission

Ms. Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Amendments to the Regulatory Capital, Capital Plan, and Stress Test Rules (Docket No. R-1603; RIN 7100-AF 02)

Ladies and Gentlemen:

Bank of America appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System's (Federal Reserve's) notice of proposed rulemaking (proposal) that would integrate the forward-looking stress test results with the Federal Reserve's non-stress capital requirements, by introducing a stress capital buffer (SCB) requirement. As a US global systemically important banking holding company (GSIB), our comments focus on the proposal's requirements applicable to GSIBs and on ensuring a level playing field globally for US GSIBs.

We have actively participated in the preparation of the joint comment letter of The Clearing House Association, the Securities Industry and Financial Markets Association, and the Financial Services Roundtable as well as the comment letters submitted by the Financial Services Forum and the American Bankers Association, and we support the views expressed and recommendations made in those comment letters. However, we have also written this letter to supplement the industry comments because we want to ensure the Federal Reserve has the benefit of hearing directly from us concerning two potential improvements that we believe will further contribute to sound, globally consistent regulatory policy that are either not addressed, or not addressed fully, in the industry letters.

Bank of America supports consistent and effective implementation of international standards across jurisdictions to reduce unnecessary complexity across the global framework. Our comments on the proposal focus on two aspects related to this goal:

- The proposal effectively adds the Method 2 GSIB surcharge, an internationally inconsistent US-only measure, to post-stress minimum capital requirements. Our view is that the US should amend its GSIB surcharge framework to be based only on the globally consistent, current Method 1 score.

- The positioning of the SCB as a buffer that would impose automatic restrictions on distributions differs from the implementation of stress buffer requirements in other jurisdictions. Bank of America recommends that the existing Basel 3 buffers be maintained as the point at which mandatory payout restrictions apply.

US GSIB Surcharge Framework

Under the proposal, banks would be required to meet their minimum capital requirements plus the new SCB, the GSIB surcharge and any applicable countercyclical capital buffer (CCYB) in order to avoid payout restrictions. This change effectively adds the GSIB surcharge to a bank's post-stress minimums, as compared to the current Comprehensive Capital Analysis and Review (CCAR) requirements. We, therefore, believe that it is necessary for the

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Federal Reserve to reconsider its implementation of the GSIB surcharge in conjunction with the proposal. Additionally, since the GSIB surcharge was calibrated and implemented, US GSIBs have taken significant steps to enhance their resiliency and resolvability, including strengthened capital, liquidity, stress testing, resolution planning, and total loss-absorbing capacity among other regulatory reforms and industry actions.

The US GSIB surcharge framework requires banks to calculate their scores under two methods and use the higher of the two to determine their applicable surcharge. Method 1 is consistent with the Basel Committee on Banking Supervision's (Basel Committee's) assessment methodology, while Method 2 is a US-only measure that incorporates short-term wholesale funding and is calibrated to result in higher surcharges than the Basel-based Method 1. While under Method 1 US GSIBs are spread out across all of the surcharge buckets (ranging from 1% to 2.5%) along with international peers, their Method 2 scores place five out of the eight US GSIBs with higher surcharges than any other global GSIB, including large European and Chinese banks (ranging from 2.5% to 3.5%, with the other 3 US GSIBs having surcharges of 1.5% or 2%).

The June 2017 US Department of the Treasury report on Banks and Credit Unions notes that "US implementation of certain international standards in a manner more stringent than the international standard can make US institutions less competitive globally" and cites the US GSIB surcharge as an example of a US rule that exceeds the international standard and should be reevaluated.

Bank of America agrees with this conclusion and believes that the US should implement requirements consistent with international standards to ensure a level playing field. Consequently, we recommend that the Federal Reserve require banks to calculate their GSIB surcharges using only the current Method 1 methodology. This approach to refining the framework is also in line with the Federal Reserve's stated aim to improve the simplicity and efficiency of the post-crisis regulatory regime.

While Bank of America believes this is the simplest and most efficient change the Federal Reserve should make in the near term, we do note that the Method 1 calculation can and should be improved. For example, the relative nature of the calculation could be changed to fixed coefficients to help banks better manage their capital planning, and foreign exchange volatility unrelated to a bank's systemic importance should not factor into the score calculation. Over the longer term, we encourage the Federal Reserve to adjust Method 1 to reflect these and other enhancements, and to lead a global effort with the Basel Committee to develop a single, coherent and harmonized methodology for determining GSIB surcharges.

Stress Capital Buffer Design

The proposal would replace the static 2.5% capital conservation buffer (CCB) with a dynamic SCB based on a bank's stress losses in the CCAR supervisory severely adverse scenario plus an add-on for certain dividends, making ongoing capital requirements dependent on the severity and volatility of the Federal Reserve's stress scenarios from year to year. A US bank's required capital levels can thus be higher than those mandated by the international Basel standards. The proposal would then subject a bank to mandatory restrictions on distributions to the extent its minimum capital requirements plus the full amount of required buffers (the SCB, GSIB surcharge and any CCYB) are not met.

We note that the proposal's design is inconsistent with its counterparts in the UK and in the Eurozone. In the UK, the stress capital depletion is set-off against both the CCB and GSIB surcharge, with the balance held as a Pillar 2B buffer. In the Eurozone, a similar approach to the UK is taken to calculate the Pillar 2G buffer, but stress depletion is set-off against the CCB and CCYB, in principle. Finally, in the case of both the UK and the Eurozone, automatic restrictions are not triggered until these Pillar 2 buffers are fully used. In other words, the automatic restrictions do not occur until a bank's capital ratios fall below the top of the Basel 3 buffer levels as currently implemented. See Appendix A for a figure comparing the three frameworks.

This significant inconsistency builds complexity into the global framework and places US GSIBs at a competitive disadvantage. The different positioning of the buffers with automatic restrictions on capital distributions will drive bank management and investors to different assessments as to the adequacy of capital in similar institutions and result in unwarranted differences in cost of capital.

In understanding these differences, three important consequences stand out:

- *'Usability' of buffers*. As proposed, US banks will be required to hold sizeable management buffers above the SCB to account for the pro-cyclicality and natural volatility in capital ratios as well as the changes in stress scenarios across stress test cycles. In effect, banks may act as if the SCB is an extension of their minimum capital requirements, meaning that it is not 'usable'. In contrast, both the UK and Eurozone constructs are designed to mitigate these effects, as they allow banks to treat Pillar 2B and Pillar 2G buffers as 'usable'. The role of capital buffers is to absorb unexpected losses in periods of stress allowing banks to rebuild capital while continuing to lend to support the economy. Banks should be willing to use buffers when necessary and need not hold significant excess capital on top of stress buffers that are higher than the internationally consistent Basel standards.

- *Automatic restriction trigger levels*. By design, automatic restrictions are triggered at very different levels under the US proposal when compared to the UK and Eurozone. This matters because the global investor community is extremely sensitive to trigger levels, especially in the market for Additional Tier 1 securities, an important source of banks' Tier 1 capital. Under the SCB proposal, potential investors of US banks' Tier 1 instruments may be discouraged because they will essentially be taking risk on the severity and nature of CCAR scenarios. A potential outcome is that the scales are tipped in favor of non-US banks in terms of investor appetite for Tier 1 securities. The market should not have to measure internationally active banks with different regulatory yardsticks. The difference in automatic trigger levels is further complicated by divergent implementation of certain definitional elements related to a buffer breach, for example how eligible retained income is measured across jurisdictions.

- *Purpose of buffers*. While there seems to be agreement on the purpose of the CCB, it seems that regulators have different perspectives on the purpose of CCYB and GSIB. The UK deems the GSIB to overlap with stress buffer assessments, while CCYB remains additive to ensure effective transmission of macroprudential policy decisions. In the Eurozone, CCYB is deemed to potentially overlap with stress buffer assessments, whereas GSIB remains additive because it is seen to capture the risk of the bank to the financial system. The US proposal incorporates both buffers as additive, but the SCB, GSIB surcharge and CCYB contain duplicative elements and should be streamlined to avoid unnecessary overlap. For example, the US CCAR assumptions require a Global Market Shock on capital markets activities, which are the same risks assessed for additional capital under the GSIB surcharge methodology; the CCAR stress scenarios contain countercyclical elements yet a separate CCYB is maintained. As currently drafted, the US proposal will mathematically result in higher capital requirements for US banks for the same risk. These differences create complexity and confusion around policy intent and objectives. It is important that regulatory alignment is achieved here.

While Bank of America supports that the calibration of Pillar 2 stress capital buffers should continue to reflect supervisory judgment, we believe convergence is needed on the design of these frameworks. In line with international requirements, and for the reasons outlined above, our view is that the Federal Reserve should maintain the Basel 3 buffer levels as the point at which mandatory payout restrictions apply. In the event that a bank failed to maintain the full amount of its SCB requirement above 2.5%, it should not be limited from making its common and preferred dividend payments, which are pre-capitalized under the proposal's capital action assumptions. Breaches of any incremental amounts above the Basel 3 buffers should require notification to the Federal Reserve and the submission of a capital plan with mitigating actions to address the shortfall, but no mandatory distribution restrictions. Additionally, we encourage the Federal Reserve to continue to work with the Basel Committee in its review of Pillar 2 frameworks to help achieve the goal of a level playing field for internationally active banks.

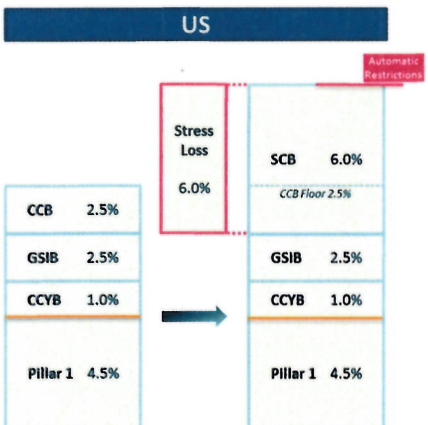
We appreciate your consideration of our comments in this letter. Please direct any questions to Jonathan G. Blum (telephone number: 212-449-3112, email address: jonathan.blum@bankofamerica.com).

Yours Sincerely,

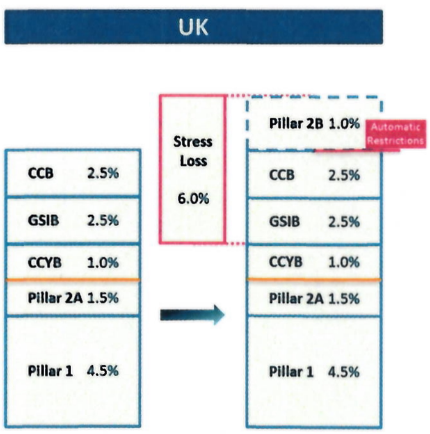
Paul M. Donofrio
Chief Financial Officer

Appendix A: Stress Capital Buffer Design in US, UK and Eurozone

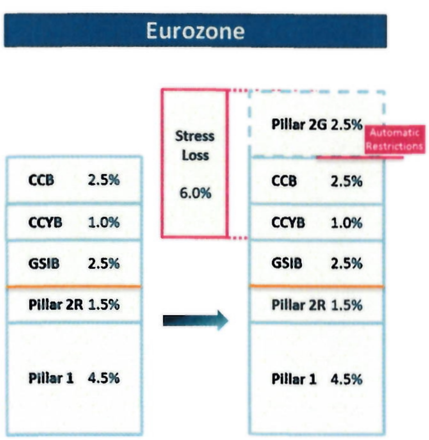
The figures below illustrate differences in the design and outcomes of stress capital buffer frameworks in the three regions by applying the frameworks to a hypothetical GSIB which reports capital depletion of 6.0% in its annual stress test. The GSIB is subject to a 2.5% GSIB surcharge and a 1.0% CCYB. In the UK and Eurozone, the GSIB is also subject to a firm-specific 1.5% Pillar 2 A/R capital add-on, which must be met at all times (the US would achieve a similar outcome by increasing Pillar 1 risk-weighted assets). All requirements are Common Equity Tier 1.



- Only CCB offsets against stress losses
- Automatic restrictions at SCB level
- SCB will be disclosed to market
- Market and banks manage SCB breach



- GSIB and CCB offset against stress losses
- Automatic restrictions below Pillar 2B level
- Pillar 2B is not disclosed to market
- Supervisors and banks manage Pillar 2B breach



- CCYB (case by case basis) and CCB offset against stress losses
- Automatic restrictions below Pillar 2G level
- Pillar 2G is not disclosed to market
- Supervisors and banks manage Pillar 2G breach

Acronyms:
SCB – Stress Capital Buffer; CCB – Capital Conservation Buffer; CCYB – Countercyclical Capital Buffer; GSIB – Global Systemically Important Bank Surcharge