



## Department of Financial Services

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June 19, 2019

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

Re: Request for Comment on Standardized Liquidity Requirements With Respect to U.S. Branches and Agencies of Foreign Banking Organizations - Federal Reserve Docket No. R-1628 RIN 7100 - AF21

The New York State Department of Financial Services (the “Department”) is pleased to submit this comment letter in response to the federal banking agencies’ request for comment regarding the potential imposition of standardized liquidity requirements on U.S. branches and agencies of foreign banking organizations (“FBOs”), which could be the subject of a future notice of proposed rule making.

The Department appreciates the concerns raised relating to the risk that can arise where a branch of an FBO is used to raise funds in U.S. dollars through short-term wholesale funding in the U.S. markets for the acquisition of loans and other assets by its parent bank and affiliates in light of the fact that short-term wholesale funding may not always be available to branches and agencies of FBOs, particularly during distressed times, and, as noted, when short term funding had in the past dried up, many branches of FBOs were left short of liquidity and had to turn to the discount window of the Federal Reserve.

The regulation of international banking is a dynamic and global exercise as growth and innovation in cross border banking brings benefits and advantages with potential for risks that require regulatory attention. For example, international banking facilitates capital flows and provides U.S. markets with essential sources of capital for economic growth and development, enables diversification of risks associated with growth, offers specialized services, diversifies earnings, allows for counter-cyclical lending from the home country when the host country conditions constrain domestic banking operations, and provides price and product competition for banking services in home and host jurisdictions. On the other hand, reversals in the home country markets or in foreign operations can reduce the ability of the parent bank to support its branches and agencies with needed capital and

liquidity. Also, liquidity vulnerabilities could arise at branches and agencies of FBOs that rely heavily on the short-term wholesale funding markets in the U.S., particularly during economic downturns.

Given the above, it is important that any policy or prudential measure relating to the liquidity of branches and agencies of FBOs be based on balancing the need for safety and soundness and financial stability, and facilitating the significant benefits of international banking, bearing in mind that branches and agencies of FBOs are not separate legal entities but are parts of larger global institutions subject to home country and regional regulation and supervision, as well as US regulation and supervision, both at the federal and state levels. Additionally, any balancing should be based on an assessment of the impact of any proposed liquidity requirement on the cost of borrowing from branches and agencies of FBOs and the over-all impact on the US markets, as well as the potential risk of retaliatory moves against U.S. bank operations overseas. All this necessitates a careful process of engagement and consultation with all regulatory and supervisory stakeholders.

Branches and agencies of FBOs are subject to the safety and soundness standards imposed by the relevant licensing and supervising agencies, whether at the state level or the federal level. There are currently certain authorities and supervisory tools available to regulators that can be utilized for the safety and soundness of the branches and agencies of FBOs, including the protection of their creditors. For example, an uninsured New York State licensed branch of an FBO is required to deposit an amount of high quality assets in a segregated account with a depository institution approved by the New York Superintendent of Financial Services to cover the cost of the branch's liquidation and to repay creditors<sup>1</sup>. The amount of such deposit is the greater of (i) \$2 million or (ii) one percent of the average total liabilities of the branch for the previous month, subject to certain caps for well-rated FBOs.<sup>2</sup> The Superintendent may also require a New York State licensed branch to maintain additional assets relative to some percentage of liabilities of the branch if the Superintendent deems it necessary or desirable for the maintenance of a sound financial condition, the protection of depositors and the public interest, and to maintain public confidence in the branch.<sup>3</sup> Furthermore, when the Superintendent takes possession of a branch or agency of an FBO, the Superintendent may, in his or her discretion, take possession of the business and property in New York of the FBO, which includes non-branch assets, if any. This clearly expands the pool of assets available to repay the creditors of such branch or agency.

In the U.S., large branches of FBOs have to meet certain liquidity requirements, such as liquidity buffers and liquidity stress testing.<sup>4</sup> The Federal Reserve presently requires that branches of FBOs maintain sufficient high quality liquid assets to cover net cash outflows over 14 days in the stress scenario designated by each bank.<sup>5</sup> Additional tools and options could be considered, including an assessment of factors that were previously summarized in Strength of Support Assessment documents.

Given the concurrent jurisdiction of various regulatory and supervisory agencies, both domestically and internationally, over the U.S. branches and agencies of FBOs, and in light of the current safety and soundness standards and supervisory authorities and tools available at the state, federal, and international levels to ensure safety and soundness of the branches and agencies of FBOs and to

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<sup>1</sup> N.Y. Banking Law Section 202-b (1); 3 NYCRR Part 51

<sup>2</sup> 3 NYCRR Part 322.1

<sup>3</sup> N.Y. Banking Law §202-b (1)

<sup>4</sup> 12 C.F.R. §252.157 (imposing liquidity buffer and stress testing requirements on FBOs with combined U.S. assets of \$50 billion or more)

<sup>5</sup> 12 C.F.R. §252.157 (c)

protect their creditors, it is critical that the federal agencies consult and coordinate closely with all domestic and international regulatory agencies that have licensing and/or supervisory responsibilities over the branches and agencies of FBOs, including state licensing agencies, prior to any proposal for rule making with respect to branch and agency liquidity requirements.

The Department appreciates the opportunity to provide this comment letter. Please do not hesitate to contact the undersigned at 212-709-5433 should you have any questions or wish to discuss any of these comments.

Very truly yours,



Shirin Emami

Executive Deputy Superintendent - Banking