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By Electronic Mail

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Office of the Comptroller of the Currency
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Washington, DC 20219

Re: Request for Comment on Standardized Liquidity Requirements with respect to U.S. Branches and Agencies of Foreign Banking Organizations (Included in the Joint Notice of Proposed Rulemaking Implementing Revisions to Regulatory Capital and Liquidity Requirements for Foreign Banking Organizations and Certain U.S. Subsidiaries of Foreign Banking Organizations, Federal Reserve Docket No. R-1628B and RIN 7100-AF21, OCC Docket No. OCC-2019-0009 and RIN 1557-AE63 and FDIC RIN 3064-AE96)

The Institute of International Bankers ("IIB") appreciates the opportunity to submit comments in response to the Agencies' questions regarding whether to apply standardized liquidity requirements to the U.S. branches and agencies ("branches") of foreign banking organizations.

The IIB is also submitting separate comment letters on (1) the notice of proposed rulemaking issued by the Federal Reserve regarding proposed changes to the enhanced prudential standards ("EPS") for international banks[1] and the notice of proposed rulemaking regarding changes to the applicability thresholds for certain regulatory capital and liquidity requirements,[2] and (2) the notice of

[1] Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies, 84 Fed. Reg. 21988 (May 15, 2019) (the "EPS Proposal").

[2] Changes to Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries, 84 Fed. Reg. 24296 (May 24, 2019) (the "Capital/Liquidity Proposal" and, together with the EPS Proposal, the "Proposals"). The Capital/Liquidity Proposal was issued by the Board of Governors of

proposed rulemaking issued by the Federal Reserve and the FDIC regarding proposed changes to resolution planning requirements.[3]

The IIB represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB's members consist principally of international banks that operate branches, bank subsidiaries and broker-dealer subsidiaries in the United States ("international banks").

I. Introduction

The task of reconciling the implementation of the Economic Growth, Regulatory Relief and Consumer Protection Act with the existing Federal Reserve framework for regulating international banks, with international standards (both those currently in force and those under development) and with evolving home-country supervision of international banks raises important practical and legal issues. There is a need to address these challenges in a balanced manner that protects the financial stability of the United States, while preserving the important role of international banks in providing credit and liquidity to U.S. markets and contributing to the overall strength of the U.S. economy. We appreciate Vice Chairman Quarles' indication that the Federal Reserve will consult with international regulators and that any resulting proposal will be subject to notice and comment.

In our view, new federal liquidity regulations for U.S. branches of international banks, whether standardized or otherwise, are not necessary to protect either the safety and soundness of individual institutions or financial stability more broadly. Additional, layered liquidity requirements imposed on branches would amplify current incentives for international banks to limit their U.S. operations, further reducing the availability of credit and the resiliency of the U.S. financial sector. Moreover, new requirements could negatively affect the relationship between U.S. regulators and their international counterparts. U.S. branches are operated by banks headquartered outside the United States that already are subject to comprehensive and consolidated liquidity regulation in their home countries. The imposition of standardized liquidity requirements on U.S. branches would represent a significant intrusion into the relationship between international banks and their home-country regulators. It also would set a precedent that could adversely affect U.S. banks operating abroad. Regulators in other jurisdictions, seeing such requirements imposed on the U.S. branches of the international banks they regulate, could respond by increasing local liquidity requirements for branches in their jurisdictions, further fragmenting global markets and liquidity pools, disrupting enterprise-wide liquidity management and generating unnecessary regulatory costs.[4]

In requesting comment on whether to adopt new liquidity regulations for the U.S. branches of international banks, the Agencies raised two potential methods for implementing such requirements. The first method would institute standardized liquidity requirements based on the liquidity

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the Federal Reserve System (the "Federal Reserve"), the Office of the Comptroller of the Currency (the "OCC") and the Federal Deposit Insurance Corporation (the "FDIC" and, together with the Federal Reserve and the OCC, the "Agencies").

3 Resolution Plans Required, 84 Fed. Reg. 21600 (May 14, 2019).

4 See Financial Stability Board, Report on Market Fragmentation (June 4, 2019), at 1 ("FSB Market Fragmentation Report").

coverage ratio ("LCR")[5] as implemented in the United States;[6] this LCR-based approach would be calibrated based on the size of the parent's combined U.S. operations ("CUSO"). The second, simpler method would apply standardized liquidity requirements to an international bank based on a percentage of assets of its U.S. branch network.

We urge the Agencies not to pursue either of these suggestions.

However, if the Agencies were to determine that they should move forward with a proposal involving branch-specific liquidity requirements, we would encourage the Agencies to observe a carefully planned process of engagement with international regulators, with the aim of reaching the best possible outcome globally, rather than an outcome resulting from the U.S. imposing additional standardized liquidity requirements first. An approach founded on coordinating action with regulators in other jurisdictions would be consistent with Vice Chairman Quarles' emphasis on the need for international dialogue in his opening statement on the Proposals.[7] Given the potential consequences of additional branch liquidity requirements for the U.S. and global financial system and economy, it is essential that any proposal in this area be part of a coordinated, transparent effort by U.S. and international regulators to address cross-jurisdictional liquidity regulation. The Basel Committee on Banking Supervision (the "Basel Committee") and the Financial Stability Board (the "FSB") are the appropriate fora for commencing this necessary dialogue and analysis and for maintaining an appropriate balance of home-host considerations. Before any U.S.-specific proposal to impose additional requirements on branches is issued, the Agencies should work with other international regulators to reach a broad consensus on a workable approach to global liquidity regulation.

At a minimum, any U.S.-specific proposal issued after the conclusion of this process should:

- be preceded by a comprehensive review of the impact of additional liquidity requirements on international payment flows and systems, conducted in collaboration with international regulatory bodies;
- be supported by robust cost-benefit and impact analyses that demonstrate the necessity of the proposed requirements;
- ensure that the scope of the proposed requirements is tailored appropriately by, first, presuming that deference to the home-country consolidated requirements applicable to branches as part of larger regulated banking organizations is sufficient to address any liquidity management concerns, and second, calibrating any additional requirements based solely on the attributes of the branch, not the parent's CUSO;[8]

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5 Basel Committee on Banking Supervision, Basel III: The Liquidity Coverage Ratio and Liquidity Risk Monitoring Tools (Jan. 2013), https://www.bis.org/publ/bcbs238.pdf (the "Basel III LCR").

6 12 C.F.R. Parts 50 (OCC), 249 (Federal Reserve) and 329 (FDIC) (the "U.S. LCR"). Citations in this letter will be to the LCR as codified by the Federal Reserve.

7 Randal K. Quarles, Vice Chairman for Supervision, Federal Reserve, Opening Statements on Proposals to Modify Enhanced Prudential Standards for Foreign Banks and to Modify Resolution Plan Requirements for Domestic and Foreign Banks (Apr. 8, 2019) ("Quarles Opening Statement").

8 Although this letter focuses specifically on branch liquidity requirements, these principles of proportionality and tailoring should be applied uniformly to any EPS imposed on international banks. As

- be coupled with removing other requirements that would be rendered duplicative by a standardized approach, such as the current Regulation YY liquidity buffer; and

- focus on standardizing and rationalizing the liquidity requirements, rather than increasing the amount of liquidity international banks must hold in their U.S. operations.

II. Standardized Liquidity Requirements for Branches Are Not Necessary and Should Not Be Adopted

1. *Standardized liquidity requirements for U.S. branches of international banks are not necessary.*

U.S. branches of international banks already are subject to standardized liquidity requirements imposed on their parent banks by their home-country regulators that meet the standards established by the Basel Committee and the FSB, including a home-country LCR. U.S. branches also are subject to liquidity supervision and regulation by their licensing authorities (the OCC and/or state bank supervisors). Moreover, under Regulation YY, branches currently are subject to liquidity stress testing and buffer requirements that effectively allocate a portion of the assets maintained in connection with their standardized home-country LCR to the international bank's U.S. operations.[9] The Agencies and the licensing authorities already have the tools to monitor significant liquidity risks of U.S. branches through call reports, FR 2052a data when applicable, and on- and off-site supervision.

In view of existing frameworks regulating entity and branch liquidity, a new U.S.-only standardized liquidity requirement would be duplicative and unnecessary. Existing home-country and U.S. liquidity standards should mitigate sufficiently the Agencies' concerns regarding the ability of branches to manage their liquidity under stress conditions. The Agencies have offered little evidence or support for why, taking into consideration existing requirements, additional requirements would be necessary; why the current structure (in place for approximately three years) is not effective in addressing the Agencies' concerns; or what has changed in the interim to warrant a new enhanced prudential standard.[10]

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we discuss in our companion letter on the Proposals, CUSO size and risk-based indicators should not be used to determine the applicability of more stringent requirements to an intermediate holding company ("IHC"). Similarly, international banks that are not required to create an IHC should not be subject to increased requirements at the U.S. branch level based on broader CUSO-level size and risk attributes.

Indeed, any new U.S. branch liquidity requirements should come out of a robust analytical process that does not presuppose that the application of additional liquidity or other EPS requirements across an international bank's CUSO or branch network is the appropriate way to address any particular areas of concern. The Proposals' requirements for additional CUSO-wide reporting and the CUSO-based calculation of risk-based indicators, coupled with additional burdens on IHCs based on CUSO size and risk attributes, are indicative of this issue and represent unnecessary and discriminatory features of the Proposals that should be eliminated.

9 See 12 C.F.R. § 252.157.

10 In particular, the Capital/Liquidity Proposal states that "[w]ithout appropriate liquid asset coverage for all components of the U.S. operations . . . a[n international bank] faces the risk that a liquidity stress in a single part of the firm may adversely affect the U.S. operations and U.S. financial stability." 84 Fed. Reg. at 24321-22. The basis for this statement is unclear, as Regulation YY liquidity stress testing and liquidity buffer requirements apply to branch and non-branch activities alike, as does home country consolidated regulation (including liquidity stress testing). The Agencies state that "[e]ven where a[n international bank]

Structurally, branches are operated by banks headquartered and regulated in other jurisdictions, rather than separately organized and capitalized legal entities under U.S. law. It has become accepted for U.S. regulators to require U.S. legal entities such as IHCs to comply with certain capital and liquidity requirements comparable to those that apply to a similarly situated, standalone U.S. bank holding company, with appropriate adjustments to account for the special position of IHCs and similar legal entities vis-à-vis their parent international banks. In contrast, standardized requirements are neither necessary nor suitable for branches, which have a different relationship to both their parent bank and their host country and are subject to central liquidity management within parent banking organizations that already are subject to a standardized home-country LCR.

2. *If other host country supervisors were to increase local liquidity requirements for branches, it would contribute to further fragmentation in global markets.*

Imposing standardized liquidity requirements unilaterally on international banks' U.S. branches would depart from internationally-agreed principles. Vice Chairman Quarles has characterized the Agencies' request for information as "novel in the realm of international regulation"[11] and a "significant shift" in regulatory approach; as a result, he has noted, the Federal Reserve should take "plenty of time to consider the costs and benefits to any shift."[12] Any contemplated branch liquidity requirements should be raised first at the FSB or in the Basel Committee, where the relevant stakeholders would have the opportunity to evaluate international standards and approaches for maintaining local branch liquidity, develop standards that balance the interests of home- and host-country regulators,[13] and consider and avoid the fragmentation of liquidity pools.[14] As Vice Chairman Quarles has noted, "[p]rocess is important, and good process leads to good substance."[15]

The Agencies should consider whether new standardized liquidity regulations imposed unilaterally on U.S. branches without first arriving at an international consensus could prompt other countries' regulation of the local operations of U.S.-headquartered institutions. Indeed, imposition of liquidity requirements on U.S. branches could lead other jurisdictions to reverse regulatory changes they have made since the financial crisis that show deference to the reforms of home-country regulators,

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. . . is subject to consolidated liquidity requirements in its home jurisdiction, the application of a standardized liquidity requirement with respect to its U.S. branch and agency network . . . would require these firms to align the location of liquid assets with the location of their liquidity risks." However, that was the purpose of the existing Regulation YY liquidity stress testing and liquidity buffer requirements, which are effective in allocating to the U.S. operations that portion of the globally required liquidity pool to the liquidity risks of the U.S. operations.

The Agencies also note that branch "model[s] presented challenges during the financial crisis." Id. at 24321. However, a decade worth of new regulation has sought to address those issues, and it is unclear from the Agencies' statements why a new requirement is necessary now.

11 Quarles Opening Statement.

12 Sam Fleming, *Global Regulators Launch Inquiry into Leveraged Loans*, FIN. TIMES (Mar. 7, 2019), https://www.ft.com/content/2cb614ee-4067-11e9-b896-fe36ec32aece.

13 See Randal K. Quarles, Vice Chairman for Supervision, Federal Reserve, Trust Everyone—But Brand Your Cattle: Finding the Right Balance in Cross-Border Resolution (May 16, 2018) ("Brand Your Cattle Speech").

14 See FSB Market Fragmentation Report at 14-15.

15 Randal K. Quarles, Vice Chairman for Supervision, Federal Reserve, Ideas of Order: Charting a Course for the Financial Stability Board (Feb. 10, 2019).

including those of the Agencies. For example, the U.K. Prudential Regulation Authority (the "PRA") has eliminated its former requirement that branches of non-U.K. banks maintain specific liquidity resources in their U.K. branches and now requires only reporting of the parent bank's LCR and related liquidity information gathered on a consolidated basis.[16] Other host countries also employ substituted compliance or waiver mechanisms in relation to branch liquidity. The recent revision to the U.K. regulatory regime illustrates that other regulators recognize that (i) the Basel liquidity requirements imposed on a consolidated basis at the parent level are sufficient to ensure the liquidity of a banking organization at the branch level and (ii) the liquidity regulation frameworks of other jurisdictions have been strengthened based on international agreement over the last several years.[17]

If the Agencies were to adopt new liquidity requirements unilaterally, other jurisdictions could follow their lead, which would affect the operations of both international banks and U.S. banking organizations operating in those host countries. Adoption by each jurisdiction of local liquidity requirements could undermine the appropriate balance between pre-positioned and centrally managed liquidity, disrupting the functioning of global markets and complicating cross-border recovery and resolution in a future crisis.[18] The resulting damage to international coordination and cross-border recognition of comparable supervisory standards risks exacerbating fragmentation of banking supervision more generally, threatening the basic tenets of cross-border supervision established through the Basel Committee and the FSB. Such an outcome would have profoundly negative effects for local and international economic conditions and significantly impair the ability of regulators to monitor and address global risks to financial stability.

Failure to consider properly standards already in place at the consolidated organization upsets the balance of "flexibility for the parent bank and certainty for local stakeholders" that Vice Chair Quarles has described as necessary when approaching the home-host relationship.[19] Addressing the issue of fragmentation of the global economic system is a major focus of the G20 under the new agenda of the Japanese presidency.[20] The FSB is supporting this agenda through evaluating the effects of post-crisis financial reforms on market fragmentation.[21]

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16 See U.K. PRA, CRD IV: Liquidity, PS 11/15 (June 2015) (eliminating branch-specific liquidity requirements) and U.K. PRA Rulebook, Part 16-05 (liquidity reporting requirements). The PRA no longer imposes a standardized liquidity requirement on local branches, but it retains supervisory authority to apply specific regulatory requirements at the level of the branch on a case-by-case basis, which could include additional branch liquidity requirements. However, such requirements are institution-specific and exceptional.

17 Vice Chairman Quarles has noted that the United States and the United Kingdom are similarly (and uniquely) situated as important host countries for internationally active banks. See Brand Your Cattle Speech.

18 See Brand Your Cattle Speech. Indeed, some countries already employ a "reciprocity" concept that would treat local branches similarly to the manner in which their home country treats branches of foreign banks, or that would eliminate the ability to waive host-country requirements if there is not similar treatment by their home country of branches of foreign banks.

19 Brand Your Cattle Speech.

20 Prime Minister Taro Aso, G20 Finance Ministers and Central Bank Governors Meeting under the Japanese Presidency (Dec. 12, 2018).

21 See FSB Market Fragmentation Report; FSB, Evaluation of too-big-to-fail reforms: Summary Terms of Reference (May 23, 2019); Letter from Randal K. Quarles, Chairman, FSB, to G20 Finance Ministers and Central Bank Governors (Apr. 9, 2019).

3. *International banks' branches generally are not used as a funding source for the activities that the proposal would treat as riskier, and therefore additional liquidity requirements on branches should not be imposed on this basis.*

The IHC requirement was instituted to ring-fence the activities of non-branch entities deemed riskier by the Agencies (e.g., broker-dealer activities) from the activities typically conducted in branches (e.g., lending and trade finance). Although a potential standardized liquidity requirement is explained as designed to prevent transmission of risks between the segments of an international bank's U.S. operations, and specifically to insulate U.S. subsidiaries from vulnerabilities at branches, the Agencies have not cited any specific examples of a liquidity risk that has been or could be transmitted from a branch to a subsidiary (whether a depository institution or a broker-dealer). If these concerns are generated by dynamics observed during the financial crisis, it also is unclear why a standardized liquidity requirement is necessary at this juncture, given the significant structural reforms that have been imposed on international banks operating in the United States and the related separation of an international bank's subsidiaries on one hand and its branches on the other.[22]

Moreover, the Agencies already have a varied toolkit available to address concerns about U.S. financial stability and the liquidity risks identified in the Agencies' questions. For virtually all international banks with large U.S. branches, transactions between a branch and an international bank's U.S. broker-dealer subsidiaries already are subject to restrictions in Regulation W, and any further concerns may be addressed through the current supervisory process, which provides the Agencies with prudential authority to address any safety and soundness or systemic risk concerns.

4. *New liquidity regulation on branches would be an indirect and inefficient way to address the Agencies' concerns regarding both the risk of future discount window borrowing and the need for liquidity or dollars overseas.*

Any concerns about borrowing at the discount window would be addressed most effectively by regulations and policies that bear directly on the circumstances under which the Federal Reserve may lend from the discount window. The Federal Reserve already has tools under Regulation A to address any concerns about the quality of collateral provided in connection with borrowing at the discount window.[23] The Federal Reserve has discretion to reject any form of collateral presented for

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22 Transfers of assets or activities from U.S. subsidiaries to U.S. branches would implicate significant issues regarding Sections 23A/23B of the Federal Reserve Act, capital, liquidity, tax, permissibility/powers, accounting and other rules, regulations, policies and procedures, greatly complicating the movement of assets and activities from one part of a bank's CUSO to another.

International banks' U.S. broker-dealer assets have dropped dramatically since 2011, by $721 billion in the aggregate. Federal Reserve statistics indicate that, from 2011 to 2018, the aggregate branch/agency assets of international banks with IHCs increased by only $84 billion in the aggregate, indicating that assets are not simply moving from international banks' broker-dealers to their branches. See Structure and Share Data for U.S. Banking Offices of Foreign Entities, Federal Reserve, https://www.federalreserve.gov/releases/iba/ (follow "March 2011" and "December 2018" hyperlinks) (branch data); Company Filings, Securities and Exchange Commission, https://www.sec.gov/edgar/searchedgar/companysearch.html (broker-dealer; data in "X-17A-5" hyperlinks). Moreover, the increase in branch assets, on a percentage basis, was much lower than the overall growth of the U.S. economy and the overall growth in total U.S. commercial bank assets, thus indicating that growth at U.S. branches of international banks has been constrained.

23 See 12 C.F.R. Part 201.

discount window borrowing under Regulation A, and credit is provided to discount window borrowers only on a very short-term basis.

In addition, in the context of concerns about discount window borrowing by international banks in particular, the Federal Reserve can direct any international bank to seek funding at its own central bank, where it can access U.S. dollar funding via swap lines. It is all the more important to coordinate and maintain strong working relationships with international regulators to ensure that liquidity issues are addressed promptly through consolidated, not branch-level, liquidity regulation where they arise. Demand for U.S. dollars by international banks and their branches—both in normal times and stress periods—is an inevitable consequence of global reliance on the dollar as the major reserve currency and should not be misinterpreted as evidence that international banks do not manage their U.S. branch dollar resources appropriately.

To the extent that the Agencies are concerned about U.S. branches needing to "secure wholesale funding to satisfy the demands of their local and global operations,"[24] cooperation with international regulators—coupled with key regulatory changes instituted over the last decade—should be sufficient to address this concern. Significant changes have been made to the international framework regulating the liquidity of internationally active banks since the financial crisis, including, among other things, the institution of an LCR in most countries. As a result of these changes, the ability of both U.S. banking organizations and international banks to weather a liquidity crisis has improved substantially.[25]

We note that home-country consolidated liquidity requirements and centralized liquidity stress testing and risk management are designed to address liquidity issues arising across the international bank enterprise, including in relation to U.S. operations and U.S. dollar needs outside the United States. Consolidated liquidity management is the only way to align and allocate needs and flows appropriately. Therefore, a U.S. branch-specific liquidity requirement also would be an inefficient and ineffective way to address dollar needs in operations outside the United States. Basing a branch-specific liquidity requirement on transactions or obligations outside the United States[26] would disrupt significantly a firm's own, holistic view of liquidity needs and movement in times of crisis. Furthermore, imposing requirements on a U.S. branch in relation to liquidity needs (or U.S. dollar assets or liabilities) outside the United States would be an unprecedented extraterritorial intrusion into the jurisdiction of home-country (and even other host) regulators and would be wholly inconsistent with Vice Chair Quarles' statements about balance of home-host responsibilities.[27]

The introduction of branch-specific liquidity requirements would impair the progress that has been made in improving the liquidity profiles of banks since the financial crisis by fragmenting global liquidity flows and disrupting enterprise-wide liquidity risk management without necessarily achieving the Agencies' objective of reducing the need for U.S. dollars in times of stress. Attempting to use U.S. branch-specific liquidity requirements to address liquidity needs outside the United States also would distort internal liquidity planning and liquidity maintenance.

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24 84 Fed. Reg. at 24321.

25 See, e.g., Federal Reserve, Financial Stability Report (May 2019), at 35 ("Banks continued to rely relatively little on short-term wholesale funding and hold large amounts of high-quality liquid assets, reflecting liquidity regulations introduced after the financial crisis and banks' greater understanding of their liquidity risks.").

26 See 84 Fed. Reg. at 24323 (Question 67).

27 See Brand Your Cattle Speech.

5. *New liquidity requirements likely would have significant effects on international banks' participation in U.S. credit and other financial markets and the U.S. payments system*.

International banks play a critical role in financing commercial, infrastructure and agricultural loans in the United States. Many of the dollars taken in through U.S. branches flow into the U.S. economy through loans by international banks to finance U.S. corporations, agriculture and infrastructure.[28] For example, in recent years, international banks have accounted for approximately 70% of infrastructure loans and have held three of the top ten U.S. agricultural lender positions. Furthermore, as shown in the SIFMA Study, international banks originate between a quarter and over half of loans to U.S. borrowers in certain key industries, including mining, agribusiness and oil and gas.[29] In addition, more than half of the 24 U.S. primary dealers are U.S. branches or subsidiaries of international banks.[30]

A duplicative and unnecessary standardized liquidity requirement would distort international banks' ability to manage their internal U.S. dollar liquidity pools and create disincentives to invest in (and facilitate investments in) U.S. businesses and dollar-denominated assets worldwide. As a result, it could: (i) make credit more expensive for U.S. commercial borrowers without achieving supervisory or financial stability gains of comparable import for the U.S. real economy, (ii) constrict the broad sources of credit currently available for dollar-denominated assets and (iii) undercut the U.S. dollar's position as a reserve currency. Moreover, additional liquidity regulation can be expected to increase the cost of U.S. dollar clearing—already a thin-margin business—and likely would cause some banks to retreat from providing liquidity for international payments. Loss of global providers for such widely-used services would hurt the global financial system on the whole, through growth in concentration. In our view, this disadvantage would not be offset by the marginal benefit of an additional layer of regulation governing the availability of liquidity in international banks' U.S. branches.

6. *International banks are an important source of capital and liquidity for U.S. firms during stress scenarios, and in the financial crisis, international banks provided an alternative to federal government support for U.S. banks.*

During the financial crisis, international banks provided critical liquidity to and investments in U.S. markets.[31] Indeed, in many instances Federal Reserve discount window borrowing by

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[28] Based on analyses of branch data, U.S. branches have become net lenders into the United States. See Bank Policy Institute, On the Resiliency of U.S. Operations of Foreign Banks (July 13, 2018), https://bpi.com/notes-papers-presentations/on-the-resiliency-of-u-s-operations-of-foreign-banks/. See also SIFMA Insights: The Importance of FBOs to US Capital Markets (Apr. 2019), at 29 ("SIFMA Study") (reflecting significant international bank loan origination to U.S. companies in industries such as mining and agribusiness).

[29] SIFMA Study at 29.

[30] Federal Reserve Bank of New York, Primary Dealers, https://www.newyorkfed.org/markets/primarydealers (as of June 6, 2019).

[31] See, e.g., Press Release, U.S. Dep't of the Treasury, $1.7 Billion Additional TARP Funds Returned to Taxpayers, Positive Return on TARP Bank Programs Reaches $10 Billion (July 5, 2011) (BMO acquired Marshall and Ilsley Bank, returning $1.7 billion in TARP funds to the U.S. Treasury); Mitsubishi UFJ Financial Group, Inc., Fed. Res. Bull. (2d Quarter 2011) ("[C]onsummation of the proposal would strengthen Morgan Stanley's capital position and allow Morgan Stanley to better serve its customers"); Press Release, Fed. Deposit Ins. Corp., [MUFG] Union Bank, National Association Assumes All Of The Deposits Of Frontier Bank (Apr. 30, 2010); Press Release, Fed. Deposit Ins. Corp., [MUFG] Union Bank, National Association Assumes All Of The Deposits Of Tamalpais Bank (Apr. 16, 2010); Press Release, Fed. Deposit Ins. Corp., TD Bank, National Association, Acquires All the Deposits of Three Florida

international banks through their U.S. branches was channeled back to the United States through loans to U.S. firms.[32] In a more constrained, fragmented liquidity environment, such cross-border transfers of liquidity and investment might not be possible, with potentially serious consequences for the U.S. and global economy.

III. Application of the U.S. LCR to U.S. Branches of International Banks

U.S. branches of international banks are already subject to their home country implementation of the LCR as part of their parents, and it is both unnecessary and unduly burdensome to require them to comply separately with the U.S. LCR rules, which deviate materially from the Basel Committee's liquidity standard. For the reasons discussed above, we oppose the application of the U.S. LCR rules to U.S. branches.

However, if the Agencies were to propose an LCR that would apply specifically to U.S. branches, we would urge the Agencies to reflect the considerations outlined below in any future proposal.

1. *If the Agencies were to propose to apply the U.S. LCR rule to U.S. branches, its application to branches should be agreed internationally and should be calibrated at a significant discount to the LCR requirement that applies to parent banking organizations under the Basel Committee's liquidity framework, similar to the internationally-agreed FSB standard for internal total loss-absorbing capacity ("TLAC").*

If the Agencies were to propose a new liquidity regulation for branches, they should begin by discussing at the international level how to minimize fragmentation of international liquidity pools and how to ensure harmonization of implementation across jurisdictions. This discussion should consider significant tailoring of the applicability of a new liquidity requirement, addressing factors such as the appropriate thresholds (e.g., branch asset size, branch outflows, etc.) at which the branch liquidity requirements would apply and the treatment of branches that operate in a net "due to" position, drawing a net surplus of funding from their parents.

In general, any LCR requirement for branches should follow a decision-making process focused on standardizing and rationalizing liquidity requirements globally. Standardization of such requirements would further the transparency of liquidity regulation and promote cooperation with regulators in other jurisdictions.[33] Given the application of similar LCR rules to the consolidated organization, a standardized branch liquidity requirement should also result in no net increase—indeed, it should result in a net decrease—in the amount of pre-positioned liquidity international banks must hold in the United States; any LCR requirement for branches should be calibrated to a level well below the

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Institutions (AmericanFirst Bank; First Federal Bank of North Florida; and Riverside National Bank of Florida) (Apr. 16, 2010); Press Release, Fed. Deposit Ins. Corp., BBVA Compass Assumes Deposits of Guaranty Bank (Aug. 21, 2009); Press Release, Banco Santander to acquire Sovereign Bancorp (Oct. 13, 2008); Press Release, Sec. and Exch. Comm'n, Statement on Proposed Lehman Brothers, Inc. Acquisition by Barclays (Sept. 17, 2008) (noting that "this is welcome news for every one of Lehman's customers" because "[e]ven before the transaction is completed, they will benefit because the broker-dealer and 10,000 Lehman employees will be able to continue their work with . . . greater funding resources for the broker-dealer's operations").

[32] See Goldberg and Skeie.

[33] See FSB Market Fragmentation Report at 16-18 (noting the role of information-sharing in promoting cooperation among financial regulators and combatting market fragmentation).

current 100% LCR requirement applicable to a top-tier parent banking organization on a consolidated basis.

Standardization at a lower level of pre-positioned liquidity would help strike the appropriate home-host balance, facilitate international cooperation and avoid imposing too many constraints on the movement of liquidity to where it is needed at any given point in time. There could be multiple ways to tailor the LCR framework to the branch context, including a fractional multiplier or a shorter outflow timeframe (e.g., 14 days, as opposed to 30 days), and other means of tailoring should also be considered, such as compliance on a monthly rather than daily basis, not requiring the full liquidity pool to be located in the branch and/or flexibility in relation to net "due from" amounts. Whatever method is used, such tailoring should be based solely on branch attributes.

The structure of branch-specific calibration could be comparable to the internal TLAC requirements applicable to material subgroups of resolution entities and would satisfy a similar purpose—that is, to pre-position only a portion of the organization's centrally managed liquidity pool in a location where its assets and risks are only a portion of the total organization, and to permit the broader organization flexibility in moving resources to where they may be needed most.[34] Indeed, relative to internal TLAC, any new liquidity requirement for branches should be calibrated at an even more significant discount. From a liquidity standpoint, branches are extensions of banks that are already subject to standardized liquidity regulation, whereas the internal TLAC requirement applies to a separately organized and capitalized legal entity.[35] Imposition of anything approaching a full 100% LCR requirement on branches would disrupt the operation of the liquidity regulations already imposed on the larger legal entities of which branches are a part, contributing to market inefficiency and fragmentation.

2. *If the Agencies were to propose to apply the U.S. LCR rule to U.S. branches, the Regulation YY liquidity buffer and the Comprehensive Liquidity Analysis and Review ("CLAR") should be eliminated.*

The liquidity buffer requirement in Regulation YY effectively requires international banks to pre-position liquidity in their U.S. branches. If the Agencies were to propose a standardized branch liquidity rule, appropriate tailoring for entities already subject to home country LCR requirements would suggest that the Regulation YY buffer requirement be removed for all international banks since it would be redundant. In addition, a formal requirement to pre-position liquidity under the LCR would eliminate the need for the CLAR exercise applied to international banks included in the Federal Reserve's Large Institution Supervision Coordinating Committee portfolio.

3. *Although the Agencies point to the consistency of the U.S. LCR with the Basel III LCR as a factor that should render compliance with standardized liquidity requirements less*

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34 See Brand Your Cattle Speech at 2 ("Flexibility, or the ability to allocate capital and liquidity to different parts of the group on an as-needed basis, helps to meet unexpected demands on resources and reduces the risk of misallocation and inefficient use of resources.") and at 6 ("[F]irms are expected to have a balance of pre-positioned and centrally managed liquidity—specifically, by balancing the certainty associated with holding liquidity directly at material entities against the flexibility provided by holding high-quality liquid assets at the parent available to meet unanticipated outflows at material entities.").

35 Due consideration for the comparability of home country liquidity regulations to which international banks already are subject as consolidated entities is consistent with both the Agencies' statutory mandate and the U.S. Treasury's 2017 recommendations on regulatory reform for banking organizations. See Department of the Treasury Report, A Financial System that Creates Economic Opportunities: Banks and Credit Unions (June 2017), at 71.

burdensome and facilitate integrated liquidity risk management, this characterization does not take into account the various "gold-plated" or "super-equivalent" requirements incorporated into the U.S. LCR.

The rules implementing the U.S. LCR provide for super-equivalent requirements in certain key areas, and these divergences from the Basel III LCR would add significant complexity and cost to the implementation of a U.S. LCR requirement for the branches of international banks that currently calculate their home-country LCR requirement under home-country frameworks consistent with the Basel III LCR.

For example, unlike the Basel III LCR, the U.S. LCR rules require subject banking organizations to add on to the total net cash outflow amount (the LCR denominator) to account for maturity mismatches between inflows and outflows over the measurement period.[36] In addition, the U.S. LCR rules impose more restrictions than the Basel III LCR on the assets that count as high quality liquid assets ("HQLA") (e.g., residential mortgage-backed securities qualify as HQLA for purposes of the Basel III LCR but not the U.S. LCR)[37] and use certain inflow/outflow assumptions that differ from those in the Basel III LCR (e.g., in relation to brokered deposits).[38] As a practical matter, these differences between the U.S. LCR and the internationally-agreed standard would complicate compliance with a U.S. LCR requirement for branches and would fragment, rather than facilitate the integration of, international banks' enterprise-wide liquidity risk management practices.

Should standardized liquidity requirements be deemed necessary for branches, the resulting compliance burdens could be alleviated by permitting branches to comply with the LCR as implemented by their home-country regulators, calibrated at an appropriate discount to the full LCR, as discussed in Section III.1 above. Standardization also should mean that, in order to provide appropriate information to facilitate comparability and horizontal review, the U.S. LCR should not be modified to treat inflows from affiliates, head office or other branches negatively when applied to branches.

4. *Imposition of a U.S. LCR or other similar standardized liquidity requirements should take into account capital equivalency deposits ("CEDs") and state asset maintenance/pledge requirements.*

Federally licensed branches are required by statute to maintain CEDs of at least 5% of their liabilities in an account at a bank located in the state in which the branch operates.[39] CEDs may not be reduced below the statutory minimum and must be available to the OCC. States often impose, to varying degrees, certain asset maintenance, asset pledge or CED-like requirements on branches licensed at the state level. To the extent that these assets are considered encumbered assets for the purposes of a standardized liquidity requirement,[40] branches could be disadvantaged vis-à-vis U.S. domestic banking counterparts. Modifying liquidity requirements, either through HQLA flexibility or revising certain outflow and inflow assumptions in the U.S. LCR, to take account of statutory asset/liquidity maintenance requirements should be considered. The Agencies also should consult further with state regulators before

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36 Compare 12 C.F.R. § 249.30(a)(3) with Basel III LCR, para. 69.

37 Compare 12 C.F.R. § 249.20 with Basel III LCR, paras. 45-54.

38 Compare 12 C.F.R. § 249.32(g) with Basel III LCR, para. 79.

39 12 U.S.C. § 3102(g). See also 12 C.F.R. § 28.15.

40 See, e.g., 79 Fed. Reg. 17240, 17301 (Mar. 27, 2014).

imposing any standardized liquidity requirements on branches operating under their licensing authority and liquidity supervision.

IV. A Simplified Liquidity Requirement Based on the Total Assets of U.S. Branches

The Agencies also describe a potential requirement based on a percentage of total assets of the branch network as an alternative to the LCR-based approach. This percentage-based approach would be simple but highly risk-insensitive, particularly if based on a percentage of total assets rather than total liabilities. As liquidity outflows are more closely tied to liabilities than to assets, a requirement based on a percentage of liabilities would target more specifically the risk intended to be addressed. However, a liabilities-based approach would still be a blunt tool if it did not account for the terms and other characteristics of the liabilities on which it is based.

Whether based on a percentage of total assets or total liabilities, any new liquidity requirement imposed through the simpler method should be set at a level low enough to ensure that it operates solely as a backstop to the existing Regulation YY liquidity buffer, rather than driving a branch's liquidity management. Using this method to establish anything higher than a backstop level is likely to increase the burden of liquidity requirements in a highly inefficient, risk-insensitive manner. If the goal of the alternative assets- or liabilities-based approach is to trade nuance and risk sensitivity for a simpler approach in order to facilitate supervisory comparisons of liquidity across branches, then it would be most appropriate for the assets- or liabilities-based approach to be designed as a backstop, rather than a mechanism for increasing the liquidity requirements of the branch, given the limitations inherent in its design.

As suggested in the Capital/Liquidity Proposal, any assets- or liabilities-based buffer should be reduced by or otherwise account for pre-positioned assets held in connection with federal and state regulatory requirements, such as CEDs, whether or not those assets are available to meet outflows outside of the circumstances specified under applicable regulations.[41] These requirements already are calculated as a percentage of liabilities or assets and serve a similar purpose.

Similar to our recommendations on the LCR approach, described in Section III.1 above, to the extent any flat assets- or liabilities-based buffer requirement draws on the elements of existing regulatory frameworks, such as the HQLA required to be held under the U.S. LCR rule or the highly liquid assets used to satisfy Regulation YY liquidity buffer requirements, these elements should be tailored and simplified appropriately if applied to branches.

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[41] Capital/Liquidity Proposal at 24324.

We appreciate your consideration of our comments. Please contact me (646-213-1147, bpolichene@iib.org), or our General Counsel, Stephanie Webster (646-213-1149, swebster@iib.org), if we can provide any additional information.

Sincerely,

Briget Polichene

Briget Polichene
Chief Executive Officer