June 21, 2019

By Electronic Mail

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

Re: Notice of Proposed Rulemaking, Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies (FRB Docket No. R-1658, RIN 7100-AF45); Joint Notice of Proposed Rulemaking, 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 (FRB Docket No. R-1628B, RIN 7100-AF21; FDIC RIN 3064-AE96; Docket ID OCC–2019-0009, RIN 1557-AE63)

The Japanese Bankers Association ("**JBA**")[1] appreciates the opportunity to comment on (i) the proposal issued by the Board of Governors of the Federal Reserve System ("**FRB**") regarding proposed changes to the enhanced prudential standards ("**EPS**") for large foreign banking organizations ("**FBOs**") (the "**EPS Proposal**")[2] and (ii) the proposal issued by the FRB, the Federal Deposit Insurance Corporation ("**FDIC**") and the Office of the Comptroller of the Currency ("**OCC**") (collectively, the

[1] The Japanese Bankers Association is an association of 137 Japanese banks and 54 non-Japanese banks with operations in Japan. Several of its member banks are active participants in the U.S. financial markets.

[2] 84 Fed. Reg. 21988 (May 15, 2019).

"**Agencies**") regarding proposed changes to the applicability thresholds for certain regulatory capital and liquidity requirements to FBOs with significant U.S. operations (the "**Capital & Liquidity Proposal**").[3] We refer herein to the EPS Proposal and the Capital & Liquidity Proposal collectively as the "**Proposals**".

I. Executive Summary

The JBA appreciates the Agencies' efforts to implement the Economic Growth, Regulatory Relief, and Consumer Protection Act ("**EGRRCPA**") and supports the Agencies' objective of tailoring the EPS applicable to the U.S. operations of FBOs in a manner that will make the regulation of FBOs more efficient without compromising the resiliency of the U.S. financial sector or posing a risk to U.S. financial stability. In particular, we support the objective of aligning the requirements for FBOs with the risks that their U.S. operations may pose to the U.S. financial system.

Notwithstanding our support for the overall objectives of the Proposals, we do have a number of significant concerns and recommendations for amendment:

- Market Fragmentation and Disregard for other Post-Crisis Reforms. Certain aspects of the Proposals could promote market fragmentation, which in turn could have the unintended effects of increasing the risks to global financial stability and creating significant financial and operational inefficiencies for internationally active banks. This is particularly true with respect to potential standardized liquidity requirements for U.S. branches of FBOs and the threshold for formation of a U.S. intermediate holding company ("**IHC**"). We recommend that the Proposals be modified in a manner more consistent with other post-crisis reforms and the G20 initiative for addressing market fragmentation.

- Diversity of FBO Business Models and Risks. The Proposals in certain respects do not accurately take account of and reflect the diversity of business models and risk profiles for the U.S. operations of different FBOs. We recommend adjustments to certain risk-based indicators ("**RBIs**") and eliminating overly stringent elements from the Proposals.

- Cliff Effects and Constraints on Growth. Inflexible RBIs and calculations based on combined U.S. operations ("**CUSO**") level thresholds could create "cliff-effects" that would unduly constrain organic growth of the U.S. banking operations of FBOs. We recommend that unduly rigid RBIs and their calculation based on CUSO-level size thresholds be reconsidered.

[3] 84 Fed. Reg. 24296 (May 24, 2019).

- Transition Periods. The transition periods provided for under the Proposals for FBOs to adjust to new requirements are insufficient. We recommend that adequate transition periods be provided under any final rule, taking into account the substantial additional burdens imposed on FBOs.

Each of these issues is addressed in more detail below in **Part II**. Finally, we have provided in **Appendix 1** and **Appendix 2**, respectively, additional comments on certain specific questions posed by the Agencies in connection with the EPS Proposal and the Capital & Liquidity Proposal.

II. Comments and Recommendations Regarding the Proposals

A. The Proposals should be modified in a manner more consistent with other reforms made since the financial crisis of 2008 (collectively, **"Post-Crisis Reforms"**) and the G20 initiative for addressing market fragmentation.

The Proposals should be modified to be more consistent with the international framework of the Post-Crisis Reforms, the U.S. Treasury white paper "A Financial System That Creates Economic Opportunities,"[4] and the G20 initiative for addressing market fragmentation.[5] In particular, we suggest adopting changes that will better harmonize the rules applicable to FBOs in the United States with other global initiatives and home country requirements.[6]

With the finalization of Post-Crisis Reforms, we believe that the resiliency and stability of the global financial system have been significantly strengthened.[7] Cross-border cooperation among home country and host country regulators for G-SIBs, both with respect to supervision and resolution of banking organizations, have been enhanced through supervisory colleges and the Crisis Management Group ("**CMG**").

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[4] Published June 2017 by Treasury Secretary Steven Mnuchin regarding recommendations for Banks and Credit Unions as stipulated by Executive Order 13772 on Core Principles for Regulating the United States Financial System https://www.treasury.gov/press-center/press-releases/documents/a%20financial%20system.pdf

[5] "We are committed to take action at the national and international level to raise standards together so that our national authorities implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets.", G20 Leaders' Statement at the Pittsburgh Summit (Sept. 25, 2009).

[6] Comments on the Capital & Liquidity Proposal Question 79.

[7] For internationally active banks which have Tier1 capital of more than €3 billion, since 2011, the CET1 risk-weighted ratio has increased by 2.7 %, from 10.0% to 12.7%. The average LCR and NSFR ratios for these banks also have improved to 135.1% and 116.0% respectively. All banks in this group also meet fully phased-in LCR minimum requirement of 100%, and 96.2% of these banks meet the 100% minimum NSFR requirement as of June 2018.

BCBS, Basel III Monitoring Reporting (Mar. 20, 2019), available at, https://www.bis.org/bcbs/publ/d461.htm.

The international regulatory landscape has dramatically changed since the time when the EPS and other requirements for FBOs were initially adopted.[8]

The risk of market fragmentation and the threat it poses to global financial stability is currently one of the top priories for the G20. As noted in the June 4, 2019, report of the Financial Stability Board ("**FSB**") on Market Fragmentation:

> *[M]arket fragmentation may reduce the resilience of both global and domestic financial systems. This might be the case where fragmentation limits opportunities for cross-border diversification and risk management, impairs market liquidity or prevents capital and liquidity from being channelled to where it is needed in periods of stress. Such market fragmentation may reduce the efficiency of cross-border investment and risk management, and thereby increase costs faced by end investors through inefficient resource allocation.*[9]

From this perspective, we believe that any proposals to alter EPS, including changing capital or liquidity requirements for FBOs, should be carefully analyzed to assess whether they may lead to further market fragmentation. New or changed requirements in one jurisdiction could encourage other jurisdictions to adopt comparable requirements, especially if such measures were deemed necessary to protect national interests. The result could be a cascading effect of market fragmentation which would not serve the goals of optimum prudential financial regulation on a global basis and would raise significant questions of national treatment and competitive equity in individual jurisdictions. This outcome has been described as a case of "the prisoner's dilemma" by Mr. Ryozo Himino, Vice Minister for International Affairs of the Financial Services Agency in Japan,[10] and can have serious adverse effects on global financial stability and economic growth.

We are concerned that the impact of market fragmentation on Japanese banks would be more serious than on U.S. and European banks, because Japanese banks are treated as FBOs both in the United States and in the EU and would, therefore, be subject to FBO rules in both jurisdictions.[11] For the purpose of maintaining a level playing

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[8] For instance, the following requirements were implemented.
- Liquidity Coverage Ratio
- G-SIB buffer
- TLAC requirements

[9] FSB, Report on Market Fragmentation (June 4, 2019), available at, https://www.fsb.org/wp-content/uploads/P040619-2.pdf.

[10] Speech by Ryozo Himino, Vice Minister for International Affairs, Financial Services Agency, Japan, at the 2018 ISDA Annual Japan Conference (Oct. 26, 2018), available at, https://www.fsa.go.jp/common/conference/danwa/20181026.pdf.

[11] CRD IV revision requires certain non-EU financial institutions to establish an intermediate parent

field, which should be assessed from both a global and a jurisdictional perspective, we request that policy makers give due consideration to whether foreign (non-U.S.) branches or subsidiaries of U.S. G-SIBs are subject to similar EPS rules in host jurisdictions when determining how EPS should apply to the U.S. operations of FBOs.

We believe that the best approach to balance the objectives of the Proposals with the global G20 agenda is to adopt rules applicable to host operations of FBOs that defer to the greatest extent possible to the home country requirements. We suggest that FBOs be permitted to use the results of the FSB's peer review and the Regulatory Consistency Assessment Programme ("**RCAP**") framework of the Basel Committee on Bank Supervision ("**BCBS**") when certifying consistency of their home regulation.[12] We believe this approach will also foster full, timely, and consistent implementation of international regulations, which is a key priority for the BCBS.

In particular, we would like to highlight the following specific points with respect to the potential inconsistency of the Proposals with the global financial stability agenda and potential impact on market fragmentation.

1. *Liquidity requirements on the U.S. branches of FBOs*[13]

While the Proposals do not formally propose any new requirements for FBO branches, we have grave concerns about any such future proposals and therefore appreciate the opportunity to provide our initial comments here. Before proposing standardized liquidity requirements for the U.S. branches and agencies of FBOs, the Agencies should have comprehensive discussions at the international level to assess: (i) their consistency with home country regulation under BCBS standards, (ii) their potential impact on the fragmentation of global liquidity flows, and (iii) the costs that will be imposed on the U.S. branches and agencies of FBOs and the related impact on particular sectors of the U.S. economy vs. the extent of any incremental benefits from imposing standardized liquidity requirements on U.S. branches and agencies.

U.S. branches of Japanese banks are not separately-capitalized, stand-alone legal entities, but rather are operated as extensions of the FBO as part of its branch network. In our view, the imposition of additional liquidity requirements on the U.S. branches of FBOs will result in further fragmentation of regulatory requirements, which is inconsistent with the BCBS system of home country regulation. Any new requirements could trap high-quality liquid assets ("**HQLA**") within the United States, potentially

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undertaking (IPU) for their operations in the EU.

[12] BCBS, RCAP on consistency: jurisdictional assessments, available at, https://www.bis.org/bcbs/implementation/rcap_jurisdictional.htm?m=3%7C14%7C656%7C60

[13] Comments on the Capital & Liquidity Proposal Question 55, 56, 60-69, 71-75.

increasing market fragmentation and friction in global USD transaction and settlement activity. Requirements to establish local, jurisdiction-specific liquidity pools in excess of current requirements could also result in negative consequences for home/host regulatory and supervisory cooperation and effective cross-border recovery and resolution arrangement. To the extent U.S. branches already are subject to comparable liquidity requirements of their respective home jurisdictions under Basel III liquidity standards, as is the case in Japan, additional standardized liquidity requirements should not be imposed on U.S. branches.[14] In addition, given that branches are already subject to strict liquidity requirements as part of the U.S. supervisory framework, including liquidity buffer requirements, liquidity reporting and other controls, and horizontal liquidity examinations, we believe the additional liquidity requirements are not necessary and would create an additional burden without a clear benefit.[15]

In addition, the issue of U.S. liquidity requirements for U.S. branches and agencies of FBOs should be considered in the context of issues related to the treatment of U.S. IHCs. IHCs are currently subject to requirements that are more stringent than those applicable to similarly sized U.S. bank holding companies ("**BHCs**") because of the inclusion of the FBO's U.S. branches in the calculation of the IHC's liquidity requirements.[16] In this regard, we note that the current IHC liquidity and other requirements for a variety of reasons have already caused a reduction in the scope of U.S. nonbanking operations of some FBOs.

2. *Threshold for IHC Formation*[17]

We opposed the initial proposal for the IHC requirement in 2013.[18] As stated in our letter:

[R]*equiring all covered entities to be structured in a single form*

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[14] BCBS RCAP, December 2016 stated "The LCR regulations in Japan are assessed as compliant with the Basel LCR standards. This is the highest grade. All components of the LCR framework, the definition of high-quality liquid assets (HQLA), liquidity outflows, liquidity inflows and disclosure requirements, are also assessed as compliant. The Assessment Team compliments the FSA for their implementation of and alignment with the Basel LCR framework". https://www.bis.org/bcbs/publ/d391.htm

[15] The FRB monitors and has already imposed limitations on the net due from / net due to positions with the parent FBO and other non-U.S. affiliates. U.S. branches are also already required to hold sizable capital equivalency deposits, a substantial earmarked and segregated deposit that is pledged to the federal or state banking regulators for resolution purposes.

[16] For example, the IHCs of FBOs with sizable CUSO assets, including both U.S. branches and US subsidiaries, are already subject to U.S.-based liquidity rules and stress testing procedures as well as monthly liquidity reporting on the 2052a. The 2052a reporting requirements are extremely granular and should allow the FRB to compute a variety of liquidity metrics including the LCR.

[17] Comments on the Capital & Liquidity Proposal Question 79.

[18] JBA, Comments on Enhanced Prudential Standards and Early Remediation Requirements for FBOs (Apr. 30, 2013), available at, https://www.zenginkyo.or.jp/fileadmin/res/en/news/news130430.pdf.

should be considered as an inappropriate regulation, lacking due consideration to the diversity of banks' business models and risk profiles. When applying requirements to FBOs, the Board should give due respect to home country regulations and supervision and not treat the U.S. operations of FBOs as stand-alone businesses and force them to comply with the same rules as U.S. banks.

We continue to oppose the IHC requirement as inappropriate "*jurisdictional ring-fencing*."[19] However, if the IHC requirement were to be retained, the threshold at which an FBO is required to form an IHC should be recalibrated to $100 billion or more in U.S. non-branch assets to be consistent with the tailoring thresholds set forth in section 401 of EGRRCPA and the principles of national treatment and competitive equity.

The risks that the IHC requirements were intended to address have already been substantially mitigated by the adoption of the internationally-agreed upon internal Total Loss-Absorbing Capacity ("**TLAC**") framework,[20] as well as home/host cross-border supervisory cooperation for recovery and resolution. Furthermore, the proposed EPS threshold for U.S. BHCs is being recalibrated to $100 billion. Therefore, we question the justification for maintaining the threshold for the FBO IHC requirement at $50 billion in U.S. non-branch assets, both on grounds of protecting U.S. financial stability and on the grounds of national treatment and competitive equity. The Proposal would create an undue burden on FBOs and their IHCs, one not shared by comparable U.S. institutions, without a discernable commensurate benefit to U.S. financial stability.

B. <u>The diversity of business models and risk profiles associated with the U.S. operations of different FBOs should be considered by adjusting certain RBIs and eliminating overly punitive elements from the Proposals</u>.

The Proposals currently do not sufficiently take into account the significant differences in bank funding profiles. U.S. branches of Japanese banks are typically either self-funded or in a net due to position vis-à-vis their foreign branch network. In

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[19] The "*jurisdictional ring-fencing*" is defined as "*conduct business in local markets through subsidiaries or to bundle certain local operations under a single entity or holding company structure*" in the FSB Report on Market Fragmentation published on June 4, 2019. https://www.fsb.org/wp-content/uploads/P040619-2.pdf.

[20] FSB, Total Loss-Absorbing Capacity Principles and Term Sheet (Nov. 9, 2015), available at, https://www.fsb.org/2015/11/total-loss-absorbing-capacity-tlac-principles-and-term-sheet/ ; FSB, Guiding Principles on the Internal Total Loss-Absorbing Capacity of G-SIBs (July 6, 2017), available at, https://www.fsb.org/2017/07/guiding-principles-on-the-internal-total-loss-absorbing-capacity-of-g-sibs-internal-tlac-2/.

contrast to comments made by Governor Brainard,[21] Japanese FBOs do not utilize short-term wholesale deposits from the United States to fund foreign parent or global banking activity. Thus, from a Japanese bank perspective, it would be more appropriate for the standards for applying EPS to target specific bank risk metrics that could impact U.S. financial instability, such as a net due to or due from, rather than general RBI based purely on size as reported in the FR Y-15 (with no calibration with respect to actual U.S. risk).

In this regard, Japanese banks are unlikely to shift business (and therefore various risk indicators) from an IHC to a branch, or vice versa. For a variety of reasons, Japanese banks typically structure their businesses within legal entities or branches, each of which serves a specific customer type or need and which cannot be easily transferred from a BHC or IHC structure to a branch. Under these circumstances, use of CUSO to determine risk in the IHC or in the U.S. branches is inconsistent with the basic realities of how business is conducted by the U.S. operations of Japanese banks. Accordingly, we recommend any IHC or branch requirements be informed by the actual risk posed by the IHC or the branch, respectively, and not be affected by calculations on a combined basis of all U.S. operations. The CUSO test leads to increased regulatory burden without a commensurate benefit to U.S. financial stability.

We believe that the proposed RBIs that would be used to categorize FBOs lack risk sensitivity and also could unfairly penalize particular businesses and transactions of certain FBOs. Specifically, we recommend that the RBIs be adjusted to take account of the following points for purposes of enhancing their risk measurement function. These adjustments would allow for a better recognition of the diversity of each FBO's business model and risk profile.

1. *Cross-Jurisdictional Activity*

There are a series of potentially unintended consequences that could come from using the cross-jurisdictional activity ("**CJA**") indicator, such as reducing money market liquidity for certain currencies or increasing volatility in the FX basis market. These consequences could negatively affect U.S. economic activity and businesses engaging in U.S. import/export activities. Specific elements of the CJA definition should be carefully analyzed to evaluate their contribution to the riskiness of FBOs in light of their disproportionate impact on FBOs compared to domestic U.S. banks.

[21] Statement on Proposals to Modify Enhanced Prudential Standards for Foreign Banks and to Modify Resolution Plan Requirements for Domestic and Foreign Banks by Governor Lael Brainard (Apr. 8, 2019), available at, https://www.federalreserve.gov/newsevents/pressreleases/3B1F641BEB4A485B994EBC38165F0F3B.htm

Raising the $75 billion threshold for the CJA indicator should be also considered.[22]

If the CJA indicator is not removed, the following should be excluded from the calculation of the CJA.

(a) **All transactions with the parent FBO and other non-U.S. affiliates**: Those transactions, including claims owed to the parent FBO and other non-U.S. affiliates, should be excluded from the computation of the CJA of an IHC or CUSO of an FBO, as transactions with affiliates are an integral part of FBO operations and do not pose the same risks as transactions with third parties. In addition, the business and risk models of FBOs are well designed to manage transactions with cross-border components. Although CJA is referred to in the Proposals as an activity which may present increased challenges in resolution, we believe that the CMG has already been enhancing preparedness for, and facilitating the management and resolution of, a cross-border financial crisis affecting globally active banks. Therefore, we propose that the Agencies leverage this existing framework to address any resolvability issues. If transactions with the parent FBO and other non-U.S. affiliates were to be included in the CJA calculation, only an excess amount of claims owed to the parent FBO and other non-U.S. affiliates over liabilities due from them should be included in the calculation.

(b) **Transactions denominated in the FBO's home currency:** The U.S. bank subsidiaries and branches of Japanese banks take deposits denominated in yen from corporate clients and foreign central banks. The funds obtained from these deposits are ultimately pooled in the deposit account of the head office in the Bank of Japan. If transactions denominated in the FBO's home currency are included in the CJA calculation, such inclusion might hinder the settlement of the home currency in the United States.

2. *Weighted Short-Term Wholesale Funding*

Non-market oriented short-term funding activity (as defined in items (a) to (d) below) should be excluded from the calculation of the weighted short-term wholesale funding ("**wSTWF**"). Raising the $75 billion threshold for the wSTWF indicator should be also considered.[23]

(a) **Short–term borrowings from the parent FBO and other non-U.S. affiliates**:

[22] Comments on the EPS Proposal Question 4, 12-15, 18 and the Capital & Liquidity Proposal Question 4, 12-15, 18.

[23] Comments on the EPS Proposal Question 20-21, 26 and the Capital & Liquidity Proposal Question 20-22, 27.

Borrowings from the parent FBO and other non-U.S. affiliates are integrated into the planning and management of the funding sources and mechanisms of the U.S. operations of FBOs and do not create risks comparable to those of third-party funding. Given that these borrowings are supported by the FBO's global financial soundness, they can provide stability in times of stress of the U.S. financial system. Furthermore, liquidity risk associated with short-term affiliate transactions is already accounted for within Regulation YY liquidity stress testing requirements through the *greatest daily cumulative net intragroup cash-flow need* calculation for both IHCs and U.S. branches.

(b) **USD payments to U.S. subsidiaries and branches from the parent FBO and other non-U.S. affiliates**: Japanese banks manage their USD funding on a global basis, and surplus funds from outside the United States may be invested by the FBO's U.S. operations in the U.S. repo market and FRB deposits. This funding structure does not mean that the U.S. operations depend on such surplus funding from the parent FBO or other non-U.S. affiliates, but rather represents the role of the U.S. operations in supporting the Japanese banks' management of USD funding. Furthermore, by intermediating short-term funds and repos on behalf of overseas affiliates, Japanese banks contribute to U.S. market liquidity.

(c) **Saving and checking deposits**: Saving and checking deposits have no specific maturities and are used for operational settlements. FBOs accept these kinds of deposits to provide settlement services to U.S. and non-U.S. customers. These deposits do not consist of risky, short-term funding but rather are USD funds provided by long-standing clients to settle their corporate business transactions within the United States. Therefore, these deposits should be excluded from wSTWF.

(d) **Short-term liabilities that are used to fund short-term assets (e.g. trade finance and supply chain finance):** The matching of the tenor of assets and liabilities, rather than contributing to liquidity risk, is indicative of prudent asset-liability management ("**ALM**") practices. FBOs should not be penalized for adopting sound ALM practices.

3. *Off-Balance Sheet Exposure*

The transactions set forth in items (a) to (c) below should be excluded from the calculation of the off-balance sheet exposure. Raising the $75 billion threshold for the off-balance sheet exposure should be also considered.[24]

[24] Comments on the EPS Proposal Question 20-21, 26 and the Capital & Liquidity Proposal Question 20-22, 27, 70.

(a) **Off-balance sheet exposures between affiliates**: These types of exposures do not reflect activities with third parties that increase interconnectedness in the financial system or that would reasonably give rise to systemic risk. Thus, they should not be counted in the off-balance sheet exposure. If such exposures were to raise resolvability challenge for FBOs, that could be addressed by CMG on a global basis.

(b) **Letters of credit and guarantees**: In the EPS Proposal, the FRB states that off-balance sheet exposures "can lead to significant future draws on liquidity, particularly in times of stress." However, the risks on the draws are relatively low compared with other risk factors. Thus, those exposures should be excluded from the off-balance exposures, or the Credit Conversion Factor ("**CCF**") for those items should be reduced.

(c) **Off-balance sheet exposures related to HQLA:** We believe that certain types of off-balance sheet activity associated with HQLA should be excluded from the calculation of off-balance sheet exposure. As an example, Japanese banks engage in securities borrowing and repo transactions in U.S. Treasuries to acquire securities to hold in the liquidity buffer. This activity reduces risk and raises HQLA within the United States, and should therefore be excluded.

4. *Punitive Impacts on FBOs*

We also suggest the Agencies carefully consider elements of the Proposals that will have a disproportionately punitive impact on FBOs. In some cases, no reason is articulated for the imposition of a new requirement that may make a negligible contribution to risk mitigation. Below we highlight two such instances of inappropriate new requirements.

- **The SCCL requirements for IHCs**[25]**:** The final single counterparty credit limit ("**SCCL**") rule of 2018 already treated IHCs differently from U.S. BHCs by applying a modified form of SCCL to IHCs with assets between $50 billion and $250 billion, whereas comparable U.S. BHCs were exempted from the SCCL rule. The Proposals would increase this burden and exacerbate this difference. Under the Proposals, IHCs that belong to Category III would also be subject to the complex and burdensome (i) economic interdependence test applicable to exposures to certain clients, and (ii) the requirement to look through special purpose vehicles for exposures to underlying entities. Impacted IHCs will incur significant burdens and costs[26] in developing and maintaining systems and

[25] Comments on the EPS Proposal Question 35.

[26] Concerning the timeline for the SCCL rule, adequate transition period should be provided beyond the

processes for new data collection, measurement, and reporting to comply with the additional requirements, even in cases where the systems and processes build-up yield minimal or no new information. To correct this difference in treatment, the same asset thresholds should be applied to U.S. BHCs and IHCs.

- **The liquidity requirements for IHCs**[27]**:** The liquidity requirements for IHCs should be determined by the IHC-based thresholds rather than the CUSO-based thresholds. For instance, under the Proposals, even if an IHC under a Category IV FBO does not exceed $100 billion in assets and $50 billion in wSTWF, the IHC would be subject to more stringent liquidity requirements if its parent FBO's CUSO exceeds the thresholds. Under these circumstances, the IHC would be subject to more stringent treatment than domestic BHCs due solely to the fact that its parent company is an FBO. On the other hand, U.S. BHCs in Category IV with similar U.S. assets would not be affected by this kind of external factor when determining whether to apply reduced liquidity requirements.

C. Inflexible RBIs and calculations based on CUSO-level size thresholds should be reconsidered as they could create "cliff-effects" constraining organic U.S. growth.

The Proposals categorize FBOs using quantitative RBIs based on CUSO calculations. This approach could create cliff-effects and constrain organic growth of the U.S. banking operations of FBOs. The Agencies should provide greater flexibility in calculating RBIs and reconsider the use of CUSO-based metrics.[28]

Under the Proposals, an FBO would be classified in Categories II or III if the FBO exceeds the $75 billion threshold in any of the four RBIs. This type of categorization creates trigger events that could lead to a sudden leap to Category II or III for newly established IHCs. For example, a BHC of a Category II or III FBO could potentially move directly into Category II or III IHC within a reporting cycle of its assets exceeding $50 billion. This type of Category trigger event would create a tremendous amount of additional regulatory burden for the newly established IHC, and could result primarily from the inclusion of CUSO assets in the calculation—even if the IHC on a stand-alone basis has less than $75 billion of each RBI. Not only would such a result be immensely disruptive for the affected IHC, but the risk categorization would

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current date of January 1, 2020 since the modification would have a different level of impact on FBOs depending on what category the FBO would belong to and it would require significant developments of new systems and processes to all FBOs.

[27] Comments on the Capital & Liquidity Proposal Question 41, 77-78.

[28] Comments on the EPS Proposal Question 20-21, 26 and the Capital & Liquidity Proposal Question 20-22, 27.

not necessarily reflect the actual risk associated with the IHC.

We not only disagree with using CUSO assets to determine IHC requirements, but also disagree more fundamentally with using asset size as a metric without regard to the riskiness of the underlying assets themselves. The better approach would be to permit risk-adjustments to the RBI calculations. For example, the off-balance sheet exposure instructions in the FR Y-15 (amended Schedule H) do not distinguish a borrowing of U.S. Treasuries from a contingent funding requirement related to a sub-prime mortgage origination pipeline.

Consequently, this trigger effect gives FBOs two choices: (i) shrink their U.S. operations to avoid exceeding any thresholds, or (ii) comply with the most stringent standards regardless of an IHC's categorization. We believe these implications are unintended consequences that are inconsistent with the Agencies' objective of tailoring EPS. Exceeding a single RBI should not be determinative of a FBO's category, because the current set of metrics used to classify FBOs lacks a clear linkage to risk to the U.S. financial system.

- **Temporary excess relating to customer transactions**: Exceptions should be permitted for calculation of risk indicators such as CJA or wSTWF to avoid inappropriate instability in categorization, e.g., temporary excesses relating to customer transactions. For example, a substantial customer deposit could create a temporary and unexpected excess, which should be permitted as an exception for the FBO provided it has sufficient LCR, liquidity stress tests, or liquidity buffers. If FBOs are forced to reject these kinds of customer requests in order to avoid temporarily exceeding a RBI, then there will be unwarranted harm to the FBO's liquidity, its ability to deliver a full range of financial services to clients, and potentially to the credibility of the firm. Therefore, these kinds of transactions should be excluded from the RBI.

- **Supplementary supervisory judgement**: If RBIs are retained in finalizing the Proposals, FRB should have clear discretion to adjust the categorization of an individual FBO. Given that RBIs do not always represent a comprehensive view of a firm's risk profile, any quantitative indicator-based approach should be supplemented with qualitative information and judgment. Moreover, the FRB's determination of an FBO's categorization should include dialogue with the FBO to take into account a particular firm's calculation components that should not be considered material from the perspective of U.S. systemic risk.

D. <u>Adequate transition periods should be provided, taking into account additional burdens imposed on FBOs.</u>

The modifications in the Proposals would affect FBOs differently depending on what category the FBO would belong to. For instance, IHCs that may become subject to additional or new liquidity requirements, SCCL, and reporting requirements will need reasonable transition periods for implementation of these requirements. In particular, the timeline for phasing-in liquidity requirements should be extended.[29]

Under the Proposals, if an FBO becomes subject to a different category, the new standards in that category would be effective on the first day of the second quarter following the date on which the FBO met the criteria for the new category. We believe this transition period is too short. In particular, it clearly is too short when one takes into account the deadline[30] for submission of the FR Y-15, which would be used to determine the applicable category.

Moreover, the proposed revisions to this framework will likely have a significant impact on the current businesses and future business strategies of FBOs, as did the EPS framework established under the 2014 final rule. The Proposals require multi-disciplinary coordination across several bank functions and implementation must be subject to multiple levels of controls. The Proposals also impose substantial new reporting burdens and may require significant developments of new systems and processes to all FBOs.

We suggest the Agencies set adequate transition periods, which should be longer than two years.[31] This includes both the initial transition period for implementation and that for the transition of an FBO's category to a higher level. The FBO would need to change its IT systems and operating procedures to respond to the new category and more stringent standards. In particular, increased frequency for certain reports like FR 2052a or LCR would require significant changes to operational processes. Firms have had years to get their FR 2052a reporting to its current level, and it is impractical to expect a firm to change from monthly T+10 style reporting to daily reporting within one calendar quarter while also maintaining the high quality of such a comprehensive report.

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[29] Comments on the EPS Proposal Question 27-28 and the Capital & Liquidity Proposal Question 28-29.

[30] The FR Y-15's submission date is 50 calendar days after the March 31, June 30, and September 30 as-of dates and 65 calendar days after the December 31 as-of date.

FRB, Banking Organization Systemic Risk Report (June 29, 2018), available at, https://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYJ+5BzDaRHakir9P9vg==.

[31] By comparison, when the EPS rules and other requirements for FBOs were approved on February, 2014, two-year transition period after July 1, 2015 was granted for FBOs which needed to comply with IHC requirements.
https://www.federalreserve.gov/newsevents/pressreleases/bcreg20140218a.htm

Appendix 1: Other Comments on the EPS Proposal

Q#	JBA Comments
Q5	We support the proposal of recognizing collateral to take into account actual risks. However, recognition of collateral should not be limited to repo transactions. In particular, there are various types of exchanges of collateral between the parent FBO and U.S. branches. Collateral other than that associated with repo transactions also should be recognized so long as the risk mitigation effects of such collateral are equivalent to that of repo transactions, as determined through case-by-case review by the Agencies. Moreover, claims secured by pre-pledged collateral (e.g., collateral that has been pledged at FRB's Discount Window) should be recognized as collateralized. If not, the liquidity risk of these positions would be overestimated compared to the actual risks.
Q10	We support the calculation of securities financing transactions, including repurchase agreements, on an "ultimate risk basis," taking into account the jurisdiction of the collateral issuer rather than the counterparty.
Q22-25	We do not support the use of the alternative scoring approach for categorization of the U.S. operations of FBOs (i.e., the Method 2 scores). Because the Method 2 calculation of the wSTWF component requires aggregate wSTWF to be divided by risk-weighted assets, banks with low levels of risk-weighted assets and/or high levels of more stable forms of wSTWF would be penalized for these stability-enhancing attributes. Moreover, at this point in time, since the rule set for the calculation of the NSFR has not been finalized, there is significant uncertainty as to the amounts of liquidity required and the composition of this liquidity. This uncertainty impacts the calculation of the RBIs used in the calculation and determination of the categorization of banking institution under both Method 1 and Method 2 of the proposed alternative scoring approach.
Q36	An FBO should be permitted to include qualified liquid assets and collateral in the calculation of HQLA for its IHC regardless of whether the assets and collateral are held in the U.S. or by the parent FBO and non-U.S. affiliates. If HQLA held outside the U.S. or held by the parent FBO or non-U.S. affiliates, such as Japanese Government Bonds and government bonds of EU countries, is not recognized as qualifying liquid assets, then the US EPS could diverge further from the Basel III requirements.
Q42, 45-46	We propose that the information required under the FR Y-15 be limited to that which is necessary for the determination of the Categories of an FBO

Q#	JBA Comments
	and an IHC. Requiring all items of the proposed FR Y-15 is unnecessarily burdensome for FBOs with CUSO assets of $100 billion or more because not all of the reports components are related to the determination of the Categories. Concerning the deadline of submission of the FR Y-15, a reasonable period of time should be provided since this FR Y-15 is completely new for FBOs without IHCs. In addition, it would be difficult to compile the data from U.S. affiliates by the existing submission date[32] since the coverage subject to the FR Y-15 is extended to not only the U.S. branches, but also U.S. affiliates on the CUSO basis. This means that the FBO may need to change its IT systems and operating procedures to compile all the data and obtain internal approvals on a regular basis.
Q43	The reporting deadline should be reconsidered. The Proposals require that Category II, III, and IV FBOs with equal to or more than $50 billion wSTWF would need to report the 2052a by T+2 regardless of the frequency.[33] The proposed deadline of T+2 would impose tremendous burdens on the FBOs. Regarding the submission of the FR 2052a, an adequate transition period should be set for the first time application to an FBO that jumped from having been an FBO with less than $100 billion in CUSO to being a Category II FBO. The proposed FR 2052a amendment states that the FR 2052a for a Category II IHC shall be reported on a daily basis rather than monthly basis from the first date of the second quarter after a category change if an FBO transfers from Category IV/III with less than $75 billion wSTWF to Category II/III with equal to or more than $75 billion wSTWF. On the other hand, the Proposals do not set a transition period in the case of the first time transition to Category II from being an FBO with less than $100 billion CUSO assets.

[32] The FR Y-15's submission date is 50 calendar days after the March 31, June 30, and September 30 as-of dates and 65 calendar days after the December 31 as-of date. https://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYJ+5BzDaRHakir9P9vg==

[33] FR 2052a Instructions – DRAFT https://www.federalreserve.gov/reportforms/formsreview/FR%202052a%20-%20FBO%20Tailoring%20Final.pdf

Appendix 2: Other comments on the Capital & Liquidity Proposal

Q#	JBA Comments
Q5, 10, 23-26, 44-46, 57-58	Please see Appendix 1.
Q40	The placement of an FBO in Category II or III results, respectively, in the application of the full daily Liquidity Coverage Ratio ("**LCR**") and the Net Stable Funding Ratio ("**NSFR**") or the reduced LCR and NSFR to the IHC. Even the reduced version of these two requirements will have a significant impact on the costs, management, and reporting of IHC liquidity. It may also materially affect the IHC's business strategy, and may result in the cessation or reduction of certain businesses. If new approaches are applied, they should be reconciled and be made consistent with existing rules that determine the LCR.
Q50	FBOs' U.S. branches and agencies should not be subject to the NSFR. We believe the NSFR is based on the premise that capital should be included in the amount of stable funding. However, branches and agencies do not have capital and it is therefore unreasonable to apply the NSFR to those branches and agencies. Unreasonable and burdensome liquidity requirements for the CUSO, including branches and agencies, could lead to adverse effects on the FBO business in the United States.

Appendix 3: Matters to be clarified

Category (# of page in the Proposals)	Item	Matters to be clarified
FR Y-15 report (EPS Proposal; 84 Fed. Reg. at 22,009-10)	The first submission date of the revised FR Y-15	We would like FRB to confirm that the first due date for the revised FR Y-15 would be as of the end of December 2020 at the earliest, as mentioned in the instruction [34] of the proposed amendment of FR Y-15.
FR Y-15 report (EPS Proposal; 84 Fed. Reg. at 22,009-10)	The trigger of the submission of the revised FR Y-15	We would like FRB to confirm that the submission of the revised FR Y-15 will start only if an FBO's CUSO exceeds $100 billion at the end of June of the preceding year.

[34] Foreign banking organizations with combined U.S. assets of $100 billion or more, as reported on the FR Y-7Q, must file schedules H through N of the FR Y-15. An FBO that reaches $100 billion or more in combined U.S. assets as of June 30 must begin reporting the FR Y-15 in December of the same year.

FRB, DRAFT Systemic Risk Report, available at, https://www.federalreserve.gov/reportforms/formsreview/FR_Y-15%20Instruction%20Revisions%20(FBO%20Tailoring)%20Final.pdf.