October 21, 2019

Robert E. Feldman
Executive Secretary
ATTN: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Securitization Safe Harbor Rule; FDIC RIN 3064-AF09

Dear Mr. Feldman:

Better Markets[1] appreciates the opportunity to comment on the notice of proposed rulemaking captioned above ("Proposal" or "Release"),[2] issued by the Federal Deposit Insurance Corporation ("FDIC").

The Proposal would eliminate certain conditions that a securitization sponsored by an insured depository institution ("IDI") would need to satisfy to qualify for a regulatory safe harbor. Currently, an IDI sponsor seeking the availability of the safe harbor must ensure that any private placement or other unregistered securitization complies with the SEC's Regulation AB, a comprehensive set of disclosure rules and other provisions designed to mitigate the high degree of systemic and investor risk associated with asset-backed securities. The Proposal would remove this requirement as a condition for the safe harbor.

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[1] Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans' jobs, savings, retirements, and more.

[2] 84 Fed. Reg. 43,732 (Aug. 22, 2019).

The safe harbor as currently framed offers a number of key benefits. It helps protect investors by motivating issuers to comply with Regulation AB, which provides investors with more effective disclosures regarding these complex offerings. It also benefits investors by protecting their interests in a securitization in the event the FDIC places the sponsoring IDI in receivership. And it ultimately helps protect the entire financial system and the American taxpayers who backstop it by reducing the likelihood that securitizations comprised of subpar assets doomed to fail will once again flood the financial system and trigger or fuel a crisis.

Under the safe harbor, the FDIC, in its role as receiver or conservator for a failed IDI, will not exercise its statutory authority to repudiate or disclaim contracts so as to reclaim assets transferred as part of the securitization ("Securitization Safe Harbor"). Alternatively, if the FDIC does repudiate the securitization agreement, then investors have recourse to various remedies on an expedited basis.

The Proposal is fundamentally flawed. If finalized, it will increase systemic risk and decrease investor protection, all without a persuasive or empirically-based justification. These conspicuous defects in the Proposal are especially troubling in light of the undeniable and central role that opaque asset-backed securities, including residential mortgage backed securities, played in the financial crisis, which triggered a wave of bank failures and inflicted huge losses on the deposit insurance fund ("DIF"). The FDIC also fails to adequately assess the impact of the Proposal, offering only speculative and unsupported assertions of its supposed benefits and essentially ignoring its potential risks. Because the Proposal lacks a basis, including justifications grounded in empirical evidence, and because it represents counterproductive policy, the FDIC should abandon the Proposal.

BACKGROUND

Asset-Backed Securitizations Fueled the Financial Crisis and Must be Subject to Continued and Robust Regulation.

Asset-backed securities ("ABS"), and particularly residential mortgage backed securities ("RMBS"), served as the primary fuel for the financial crisis, as toxic and worthless securities were distributed across the globe. In the run-up to the crisis, banks peddled, and investors bought, huge swaths of securities filled with toxic, subprime mortgages that were doomed to default. They proliferated largely because they were so complex and opaque, leaving even many arguably sophisticated institutional investors ill-equipped to evaluate them.[3] And because investors were unable to assess the quality of the securities on their own, they relied heavily on the ratings assigned to these securities by the credit rating agencies. Those agencies, because of inherent conflicts of interests, flawed models, and faulty assumptions, routinely blessed these high-risk

[3] 2010 Safe Harbor Rule at 60,289.

securities with AAA ratings. When these securities inevitably blew up, it brought the financial system to the brink of collapse and the world economy to the brink of a second Great Depression, ultimately resulting in a crisis that cost the U.S. over $20 trillion[4] and the world much more.[5]

The financial crisis broadly put the lie to the notion that self-interested market participants are capable of effective self-regulation. Preceding the crisis, issuers were motivated by the irresistible lure of huge profits available through the originate-to-distribute model, off-loading many risks to unsuspecting or all-too-credulous investors. At the same time, sophisticated institutional investors, with every incentive and often a duty to appropriately assess the risks of their investments, often failed to do so in the case of ABS and RMBS, eagerly buying up higher yielding instruments that were bound to blow up.

Thus, the financial crisis conclusively established the need for strong and continued regulation of the financial markets, even those markets with apparently sophisticated market participants. Compounding the importance of regulatory oversight, even if ABS are sold to genuinely sophisticated investors, to the extent that those investors are entities such as pension funds, losses on those investments can have a direct and negative impact on the financial well-being of everyday Americans,[6] in addition to the financial stability implications.

Following the crisis, policymakers responded with a significantly enhanced regime governing the ABS markets, among other major reforms. Congress, in the Dodd-Frank Wall Street Reform and Consumer Protection Act,[7] addressed many of the concerns in the ABS market with provisions prohibiting certain conflicts of interest,[8] requiring financial institutions that securitized and sold assets to retain an economic interest in securitizations they underwrote (i.e. skin-in-the-game),[9] and directing the SEC to enhance the disclosure and reporting requirements for ABS transactions.[10]

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4 BETTER MARKETS, THE COST OF THE CRISIS: $20 TRILLION AND COUNTING (July 2015), https://bettermarkets.com/sites/default/files/Better%20Markets%20-%20Cost%20of%20the%20Crisis.pdf.

5 ADAM TOOZE, HOW A DECADE OF FINANCIAL CRISES CHANGED THE WORLD (2018).

6 Comment Letter from CalPERS regarding SEC's Regulation AB (Aug. 2, 2010) (explaining that $6 billion of pension plan money is invested in ABS), https://www.sec.gov/comments/s7-08-10/s70810-111.pdf.

7 Public Law No. 111-203, 124 Stat. 1376 (July 21, 2010) ("Dodd-Frank Act").

8 Dodd-Frank Act § 621.

9 Dodd-Frank Act § 941.

10 Dodd-Frank Act § 943.

<u>The FDIC Adopted the 2010 Safe Harbor Rule in Response to the Flaws Exposed by the Crisis.</u>

Because of the multifaceted aspects of the financial crisis, many agencies, including the FDIC, have a critical role to play in ensuring that the crisis is not repeated. In particular, the FDIC, in its role as receiver or conservator for failed insured depository institutions ("IDIs"), has the statutory authority to repudiate or disclaim contracts entered into by the IDI.[11] In terms of ABS (including RMBS), this means the FDIC can essentially reclaim assets transferred as part of the securitization. Since 2000, however, the FDIC has taken the position that it would not use its statutory power to repudiate contracts to reclaim assets transferred as part of a securitization, as long as the securitization met certain requirements.[12]

In 2010, in response to the issues the financial crisis exposed in the ABS market, as well as certain accounting changes, the FDIC updated the Securitization Safe Harbor.[13] Among other things, this revision required significantly greater disclosures regarding the assets making up the securitization to qualify for the safe harbor, including compliance with the SEC's Regulation AB.[14] At the time, the SEC was in the process of overhauling Regulation AB, and the SEC's then-current proposal would have applied to certain private issuances. However, the SEC did not adopt that particular provision when it finalized Regulation AB in 2014.[15] As a result, if an IDI wants a securitization to qualify for the benefits of the safe harbor in connection with a private offering, it must satisfy the conditions of Regulation AB, even though the SEC does not require such compliance.

This additional layer of protection was deemed necessary and appropriate by the FDIC, particularly in light of its statutory duties regarding the DIF. This conclusion was well-justified, notwithstanding the SEC's decision to scale back disclosure requirements for private offerings under Regulation AB, given the importance of disclosure as previously explained by the FDIC:

> For all securitizations, disclosure serves as an effective tool for increasing the demand for high quality financial assets and thereby establishing incentives for robust financial asset underwriting and origination practices. By increasing transparency in securitizations, the Rule will enable investors (which may include banks) to decide whether to invest in a securitization based on full information with

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11 12 U.S.C. § 1821(e)(1).

12 2010 Safe Harbor Rule at 60,287.

13 Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After September 30, 2010, 75 Fed. Reg. 20,287 (Sept. 30, 2010) ("2010 Safe Harbor Rule").

14 2010 Safe Harbor Rule at 60,290.

15 Asset-Backed Securities Disclosure and Registration, 79 Fed. Reg. 57,184, 57,190 (Sept. 24, 2014).

respect to the quality of the asset pool and thereby provide additional liquidity only for sustainable origination practices.[16]

Nonetheless, the FDIC now proposes to significantly weaken the regulatory protections applicable to privately offered ABS, including most notably the very RMBS that incubated and fueled the crisis, all without adequate justification, as explained below. This will lower the quality of ABS in the market, undermine systemic stability, and increase the number of securitizations eligible for the safe harbor, thereby increasing the risk of loss to the DIF.

Safe Harbors Must Be Carefully Designed to Achieve their Goals without Compromising Important Regulatory Protections.

The requirements the FDIC adopts as a condition for providing the significant benefit of a safe harbor from its contract repudiation authority are critically important and must be carefully calibrated.

If the safe harbor is too permissive, it not only removes a potentially powerful tool the FDIC can use to protect the DIF but also incentivizes poor quality ABS of the sort that helped bring the financial system to the brink of collapse. By contrast, if the securitization safe harbor appropriately encourages IDIs to engage in quality underwriting practices, it reduces the scope and severity of IDI failure, protecting the DIF.

Needless to say, protection of the DIF, which actually had a negative balance in the midst of the crisis,[17] is of critical and primary importance to the FDIC and taxpayers more broadly. Moreover, the requirement of extensive disclosure as a condition of the safe harbor, including the requirement of compliance with the SEC's Regulation AB, serves to ensure that investors appropriately understand and assess the real risks associated with investing in a particular securitization, helping to prevent the dangerous proliferation in the financial system of securitizations filled with toxic assets.

COMMENTS

I. THE PROPOSAL LACKS AN ADEQUATE JUSTIFICATION.

The 2010 Safe Harbor Rule was a key component of the regulatory reforms that addressed critical flaws in the securitization regime—flaws that helped bring about the financial crisis. In particular, the 2010 Safe Harbor Rule reflects the FDIC's well-considered conclusion that a robust

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16 2010 Safe Harbor Rule at 60,293.

17 FDIC, Crisis and Response: An FDIC History 2008-2013 155 (2017), https://www.fdic.gov/bank/historical/crisis/chap5.pdf.

disclosure regime, including disclosures pursuant to the SEC's then-proposed Regulation AB, were essential to bringing transparency to these complex investments, protecting investors, promoting the integrity of the financial system, and safeguarding the DIF.

Those reforms should not be modified or weakened unless the FDIC can advance a strong justification based on credible and substantial evidence that doing so will result in significant public benefits, not merely reduced costs or burdens on the regulated industry. Above all, the FDIC must show that doing so will ***not*** harm investors or increase systemic risks that could endanger the DIF or put taxpayers on the hook for another round of bank bailouts.[18]

Nowhere in the Release does the FDIC offer an adequate, credible justification for the Proposal that meets these criteria. Accordingly, the Proposal is arbitrary and capricious and vulnerable to legal challenge.

A. The FDIC fails to justify its proposed shift in policy.

When an agency departs from a prior position, it must "display awareness that it *is* changing position" and "must show that there are good reasons for the new policy."[19] The 2010 Safe Harbor Rule represented the FDIC's considered judgment, bolstered by its experience during the financial crisis, that the conditions for reaping the benefits of the safe harbor were necessary

> to provide greater clarity and transparency to allow a better ongoing evaluation of the quality of lending by the banks and reduce the risks to the DIF from opaque securitization structures and the poorly underwritten loans that led to the onset of the financial crisis.[20]

The FDIC fails to explain why it has abandoned this well-grounded finding. Instead of offering credible justifications backed up by robust analysis to justify changing course, the FDIC cites only (1) vague and unsourced assertions of burdens on the industry, and (2) the questionable regulatory judgment of the SEC, a different agency with a different mission and different statutory duties than those of the FDIC.

18 Statement by Martin J. Gruenberg, Member, FDIC Board of Directors (July 16, 2019) ("If the FDIC proposes to eliminate the Regulation AB disclosure requirements of the Safe Harbor Rule that apply to private placements in the RMBS market, it has an obligation to identify clearly what in the disclosure requirements is an impediment to the market and why its elimination would not undermine the purposes of the FDIC's Rule."), https://www.fdic.gov/news/news/speeches/spjul1619c.html.

19 *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (emphasis in original).

20 2010 Safe Harbor Rule at 60,291.

1. *<u>Unsourced assertions of industry "feedback" do not justify the Proposal's shift in policy.</u>*

One justification the FDIC offers for its shift in policy is industry "feedback that it is difficult for institutions to comply with Regulation AB as applied to certain types of securitization transactions." The Release adds that "FDIC staff has been told that potential IDI sponsors of residential mortgage securitizations have found that it is difficult to provide certain information required by Regulation AB."[21] The FDIC does not identify the source of this self-interested and apparently anecdotal "feedback" or detail its efforts (if any) to determine whether this "feedback" was fairly representative of widespread challenges. Nor does it attempt to offer any analysis that would substantiate these claims.

Moreover, even if these unsourced industry assertions about the difficulty of meeting certain requirements of the current safe harbor were accurate, that alone could not justify the Proposal. The FDIC adopted the current requirements specifically to combat the risks in the ABS market that led to the financial crisis, specifically the inadequate disclosure of salient characteristics of complex and opaque ABS, leaving even sophisticated investors unable to fully assess and understand their risks.[22]

If it is indeed "difficult" for IDIs to provide the information required by Regulation AB for certain securitizations, the inescapable conclusion is that those securitizations are precisely the type of opaque, impossible-to-assess securitizations that led to the financial crisis, i.e. precisely the type of securitizations that the 2010 Safe Harbor Rule was never intended to cover because those investments present an excessive risk to investors, the DIF, and the financial system. It will rarely be the case that making things easier for the regulated industry is, by itself, an adequate justification for any rule, and it will never be the case that ***making it easier for the regulated industry to do the one of the very things that brought the financial system to the brink of collapse*** can justify a rule.

2. *<u>The SEC's decision not to apply Regulation AB to private placements does not justify the Proposal.</u>*

Another justification the FDIC offers for the Proposal is that the SEC declined in its final Regulation AB to apply the disclosure requirements to private placements.[23] However, this is not an adequate justification for the Proposal. The FDIC was aware, when finalizing the 2010 Safe Harbor Rule, that Regulation AB, then in the proposal stage, was subject to change or, for that

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[21] Release at 43,733-34.
[22] 2010 Safe Harbor Rule at 60,293.
[23] Release at 43,734.

matter, might never even be finalized.[24] Notwithstanding these possibilities, the FDIC concluded "that regardless of whether the securitization transaction is in the form of a private rather than public securities issuance, full disclosure to investors in such transaction is necessary."[25]

Further, as the FDIC explained in 2010:

> An important consideration is that different regulatory agencies have different regulatory jurisdiction. The FDIC has regulatory jurisdiction over the rules applied in the resolution of failed IDIs, as the SEC has jurisdiction over disclosure requirements under the securities laws. In exercising their different responsibilities, the agencies may have to adopt rules addressing the same issues within their regulatory mandate… For the FDIC's safe harbor rule, the FDIC is setting the conditions that define how it will apply its receivership powers and, thereby, what types of transactions will be entitled to the safe harbor protecting them from application of certain of those powers.[26]

Put simply, the FDIC and SEC are different agencies with different mandates adopting rules for different purposes. That the SEC did not ultimately apply Regulation AB to private issuances cannot, by itself, justify the FDIC's departure from its prior position that compliance with Regulation AB for all issuances, public and private, should be required to qualify for the FDIC's safe harbor. The SEC's approach deserves especially little weight, if any, because the SEC never even attempted to justify or explain its decision.[27]

Congress gave the FDIC the authority to resolve failed IDIs, not the SEC, and the FDIC should not cede to the SEC the power and duty to determine how the FDIC will exercise its resolution authority, particularly with respect to eligibility for a discretionary safe harbor.

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24 Statement by Martin J. Gruenberg, Member, FDIC Board of Directors (July 16, 2019), https://www.fdic.gov/news/news/speeches/spjul1619c.html.

25 Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After September 30, 2010, 75 Fed. Reg. 27,471, 2,7478 (May 17, 2010).

26 2010 Safe Harbor Rule at 60,291.

27 The sum total of the SEC's explanation was this: "We are not adopting at this time…[r]ules requiring issuers to provide the same disclosure for Rule 144A offering as required for registered offerings," while noting that the proposal "remained outstanding." Asset-Backed Securities Disclosure and Registration, 79 Fed. Reg. 57,184, 57,190 (Sept. 24, 2014). The FDIC should also take seriously the possibility that the SEC's decision not to apply Regulation AB to private issuances was a flawed one, and that it should not compound that flaw. Regulatory harmonization is counterproductive and undesirable if the net result is uniformly lowering financial protections.

B. <u>The FDIC fails to credibly assess the potential impact of the Proposal.</u>

The FDIC compounds its failure to offer a credible justification for the Proposal by also failing to credibly assess the impact of the Proposal. It is black letter administrative law that when promulgating a rule, an agency must "articulate a satisfactory explanation for its action," which necessarily includes credibly identifying the expected benefits and at least acknowledging and grappling with the expected risks.[28] The FDIC fails to do so here. Instead, to the extent the Proposal purports to identify any benefits, it does so only in the most speculative manner:

- The Release states that the Proposal "could" result in an increase in the supply of credit for residential mortgages.[29] This speculative assertion is presumably presented as a benefit, but the FDIC ignores that it was a massive increase in the supply of credit for residential mortgages, enabled by RMBS filled with toxic mortgages but blessed with AAA ratings, that led to the financial crisis.[30] Moreover, while the FDIC primarily focuses on the potential for the Proposal to increase residential mortgage lending, it fails to address the danger that the Proposal could also increase activity in other potentially risky asset classes that may also be securitized in ABS.

- The Release states that the Proposal could result in "[s]ome associated increase in measured U.S. economic output."[31] That the Proposal could lead to a measurable increase in U.S. GDP, estimated to be over $21 trillion for 2019,[32] is a bold assertion apparently based on speculation for which the FDIC offers no support. Moreover, any increase in GDP tied to the Proposal would have to be regarded as phantom economic growth, arising potentially from the proliferation of toxic assets and bound to disappear once those assets collapse, as they did in the 2008-2009 crash.

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28 *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

29 Release at 43,375.

30 While the FDIC focuses on the potential increase in residential mortgage lending as a result of the Proposal, it could also increase activity in other, riskier sectors. For example, the Proposal would appear to make it easier for IDIs to issue collateralized loan obligations, about which many observers have expressed steadily growing concerns. This would be especially dangerous because of a recent court ruling that CLOs are not subject to the Dodd-Frank risk retention or "skin-in-the-game" requirements, leading to a potential replay of the dangerous "originate-to-distribute" model of mortgage loan securitizations that led to the financial crisis. *See* Am. Br. of Better Markets in *Loan Syndications & Trading Ass'n v. Sec. & Exch. Comm'n*, 882 F.3d 220 (D.C. Cir. 2018), https://bettermarkets.com/sites/default/files/Amicus%20Brief%20of%20Better%20Markets%20in%20Loan%20Syndication%20v.%20SEC%20%206-15-2015.pdf.

31 Release at 43,735.

32 IMF, World Economic Outlook: U.S. Report (accessed Oct. 9, 2019), https://www.imf.org/external/pubs/ft/weo/2019/01/weodata/weorept.aspx?pr.x=22&pr.y=4&sy=2018&ey=2020&scsm=1&ssd=1&sort=country&ds=.&br=1&c=111&s=NGDPD%2CPPPGDP%2CNGDPDPC%2CPPPPC&grp=0&a=

- The Release states that the Proposal "could increase the willingness of IDIs to sponsor the issuance" of private or unregistered ABS.[33] Not only is this speculative, but the FDIC fails to explain why it would be desirable for more IDIs that struggle to provide meaningful information on assets in their securitizations to sponsor more private market ABS. And it admits that the "FDIC does not have a basis for quantifying the amount of any impact."[34]

- Finally, the Release cites reduced compliance costs. That is a makeweight argument that can be used to support any de-regulatory measure regardless of how harmful or even catastrophic. However, the mission of the FDIC is not to minimize industry compliance costs. In addition, the amount of savings cited in the release is extremely small in absolute terms and relative to the heightened risks of systemic instability and investor abuse that it presents.[35]

On the other hand, the FDIC fails to meaningfully assess any of the potential risks associated with the Proposal. The FDIC acknowledges the possibility that the Proposal could result in:

- reduced information flow to investors;
- less efficient allocation of credit;
- potential losses to investors, including banks; and
- increased vulnerability of the mortgage market to periods of financial stress (i.e., many of the risks that contributed directly to the financial crisis).[36]

Nevertheless, the FDIC ***dismisses these risks with a single sentence offering no specifics or analysis***:

> The FDIC believes that a number of post-crisis regulatory changes make it unlikely that substantial growth of similar types of RMBS would occur again.[37]

This lone assertion is weak on its face, unsupported, and conceptually flawed. First, it offers only the tepid prediction that a resurgence of toxic RMBS is "unlikely," a poor basis on which to gamble with the stability of the financial system. Furthermore, it provides no concrete support. What specific post-crisis regulatory changes justify this belief? The FDIC does not say. And what is the basis for the FDIC's conclusion that those unidentified post-crisis regulatory changes will prevent the Proposal from regenerating the conditions that led to the financial crisis? The FDIC does not say. Finally, it rests on the erroneous notion that eliminating a beneficial regulatory protection is acceptable because other protections ***may*** mitigate the harmful impact of

33 Release at 43,735.
34 *Id.*
35 *Id.*
36 Release at 43,375.
37 Release at 43,376.

the repeal. In fact, it is not at all clear that the reforms now in place can or will prevent the return of high-risk and destabilizing securitizations to our financial markets. Moreover, one of the fundamental lessons of the financial crisis was that protecting financial stability requires layers of regulatory protection, not a minimalist approach that pares back important safeguards as much as possible. Thus, the Regulation AB requirements should remain applicable to the safe harbor, ***in addition to*** the other measures that were designed to enhance the stability, fairness, and transparency of the securitization market. The FDIC's approach, amounting to baseless and hedged speculation, is the definition of arbitrary and capricious rulemaking and a clear violation of the letter and spirit of the APA.

The foregoing failures to justify the Proposal and to credibly assess its impact, both positive and negative, render the Proposal legally unjustifiable.

II. THE LIKELY IMPACT OF THE PROPOSAL MUST BE EVALUATED IN LIGHT OF THE BROAD DEREGULATORY MOVEMENT NOW UNDERWAY.

The FDIC must consider the impact of the Proposal not only in isolation but also in light of the deregulatory environment that currently prevails. The Proposal is part of a long series of statutory and regulatory measures that will collectively and substantially weaken the entire framework of reforms adopted in the Dodd-Frank Act, thus increasing the likelihood, proximity, and severity of another devastating financial crisis.

For example, the Board of Governors of the Federal Reserve, the Office of the Comptroller of the Currency, and the FDIC have recently finalized changes to the thresholds for application of certain capital and liquidity requirements.[38] In addition, the FDIC and the other prudential regulators have previously issued numerous de-regulatory proposals, including proposed changes to the current requirements governing bank capital, capital planning, and stress testing.[39] Other prudential regulators have proposed to modify the enhanced supplementary leverage ratio—a

[38] Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements (issued Oct. 10, 2010), https://www.federalreserve.gov/aboutthefed/boardmeetings/files/tailoring-rule-fr-notice-20191010a1.pdf. Better Markets commented on this rule Proposal. *See* Letter from Dennis M. Kelleher, President and CEO, Better Markets (Jan. 22, 2019), https://bettermarkets.com/sites/default/files/Better%20Markets%20Comment%20Letter%20Capital%20and%20Liquidity%20Proposal.pdf.

[39] Amendments to the Regulatory Capital, Capital Plan, and Stress Test Rules, 83 Fed. Reg. 18,160 (Apr. 25, 2018). Better Markets also provided details on the dangerous deregulatory environment in its response to this proposal. *See* Letter from Dennis M. Kelleher, President and CEO, Better Markets (Jun. 25, 2018), https://bettermarkets.com/sites/default/files/Better%20Markets%20CL%20to%20Fed%20-%20Cap%20buffer%20and%20stress%20testing%206-25-18.pdf.

release deemed so dangerous and unnecessary that the FDIC refused to join in its issuance.[40] And still other de-regulatory measures are reportedly forthcoming.

Because the Proposal would operate in conjunction with these other deregulatory initiatives, it would pose a comparatively greater threat to the regulatory framework that helps protect and preserve the stability of our financial system. Just as the benefits of a single new regulation must be evaluated not only in isolation but also in terms of the larger benefits of the entire framework of which it is a part, the threats and risks of a single de-regulatory measure must also be viewed in terms of the overall impact of a collection or series of related deregulatory measures. This deregulatory context intensifies the threat of any single rule—including the Proposal—that seeks to unwind, rollback, or dilute the measures that were carefully put in place to prevent and mitigate any future financial crisis.

As a key regulator responsible for safeguarding the financial stability of the United States, as well as the sole statutory guardian of the DIF, the FDIC has an especially important responsibility to evaluate such rules not just in isolation, but also in light of the many other deregulatory actions taken and underway.

CONCLUSION

We hope you find these comments helpful.

Sincerely,

[redacted]

Dennis M. Kelleher
President & CEO

Stephen W. Hall
Legal Director & Securities Specialist

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40 Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for U.S. Global Systemically Important Bank Holding Companies and Certain of Their Subsidiary Insured Depository Institutions; Total Loss Absorbing Capacity Requirements for U.S. Global Systemically Important Bank Holding Companies. 83 Fed. Reg. 17,317 (Apr. 19, 2018). *See* Letter from Dennis M. Kelleher, President and CEO, Better Markets (Jun. 25, 2018), https://bettermarkets.com/sites/default/files/Better%20Markets%20CL%20to%20OCC%20and%20Fed%20eSLR%206-25-18.pdf.

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