Please note that the comments expressed herein are solely my personal views

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- 12 CFR Part 347; RIN 3064-AE36
- Alternatives to References to Credit Ratings With Respect to Permissible Activities for Foreign Branches of Insured State Nonmember Banks and Pledge of Assets by Insured Domestic Branches of Foreign Banks

Dear Sir.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking: Alternatives to References to Credit Ratings With Respect to Permissible Activities for Foreign Branches of Insured State Nonmember Banks and Pledge of Assets by Insured Domestic Branches of Foreign Banks.

You are proposing to amend your international banking regulations (Part 347) consistent with section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the FDIC's authority under section 5(c) of the Federal Deposit Insurance Act (FDI Act). Section 939A directs each federal agency to review and modify regulations that reference credit ratings. The proposed rule would amend the provisions of subparts A and B of Part 347 that reference credit ratings. Subpart A, which sets forth the FDIC's requirements for insured state nonmember banks that operate foreign branches, would be amended to replace references to credit ratings in the definition of "investment grade" with a standard of creditworthiness that has been adopted in other federal regulations that conform with section 939A. Subpart B would be amended to revise the FDIC's asset pledge requirement for insured U.S. branches of foreign banks. The eligibility criteria for the types of assets that foreign banks may pledge would be amended by replacing the references to credit ratings with the revised definition of "investment grade". The proposed rule would apply this investment grade standard to each type of pledgeable asset, establish a liquidity requirement for such assets, and subject them to a fair value discount. The proposed rule would also introduce cash as a new asset type that foreign banks may pledge under subpart B and create a separate asset category expressly for debt securities issued by government sponsored enterprises.

I generally support the proposed rules concerning credit ratings, which replace a rules-based approach with a forward-looking, principles-based approach to determining standards of creditworthiness. I believe that it is appropriate that banks should not simply (or solely) rely on credit ratings from nationally recognised statistical rating organizations (NRSROs) when evaluating securities, but should take more responsibility in this arena in line with their fiduciary responsibilities.

Although I prefer the proposed principles-based approach over the previous rules-based approaches, I am not convinced that the proposed rules are sufficient and complete to meet the statutory intent under the Dodd-Frank Act. Section 939A(b) thereunder states that: “Each such agency shall modify any such regulations… to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations”.

For example, Proposed § 347.102 (o) states that: “an entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected”. I am not convinced that “low” and “expected” are specific enough in order to represent a “standard of creditworthiness”, as such standard would be subjective, entity-specific and possibly arbitrary.

Therefore in answer to your specific question, I am not convinced that the proposed revisions would address the FDIC’s objective of applying a standard of creditworthiness, other than the exclusive use of credit ratings, that is transparent, well defined, differentiates credit risk, and provides for the timely measurement of changes to the credit profile of the investment.

Yours faithfully

C.R.B.

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