BANCO CENTRAL DO BRASIL

December 12, 2016

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

By email: comments@FDIC.gov

Re: Notice of Proposed Rulemaking: Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions (FDIC RIN No. 3064-AE46)

Ladies and Gentlemen:

Banco Central do Brasil ("BCB")[1] appreciates the opportunity to provide the Federal Deposit Insurance Corporation (the "FDIC") with comments and recommendations regarding the notice of proposed rulemaking (the "Proposed Rule") promulgated by the FDIC regarding restrictions on qualified financial contracts ("QFCs") of systemically important U.S. banking organizations and the U.S. operations of systemically important foreign banking organizations (collectively, "Covered Entities").[2]

BCB generally supports the Proposed Rule's objectives of improving the resolvability of systemically important U.S. banking organizations and systemically important foreign banking organizations and enhancing the resilience and the safety and soundness of certain state savings associations and state-chartered banks that are not members of the Federal Reserve System. Indeed, as a central bank, we are encouraged by the efforts within the United States to help make the global banking system more stable, safe, and sound, which, in turn, will help make the global financial system more stable, safe, and sound.

Our comments in this letter address whether there are types of financial contracts that fall within the definition of covered QFC that could be excluded without compromising the policy objectives of the Proposed Rule. To this question we answer in the affirmative. Specifically, section 382.7 of the Proposed Rule provides that a Covered Entity is not required to conform a covered QFC to which a central counterparty ("CCP") is a party. We believe the exclusion provisions of section 382.7 should be extended to apply to central banks and sovereigns. We believe a limited expansion of section 382.7's exemption to include

[1] BCB is the central bank of Brazil. It was established on December 31, 1964 and, like other central banks throughout the world, is the principal monetary authority of the country.

[2] 81 Fed. Reg. 74326 (October 26, 2016).

central banks and sovereign entities would be both in keeping with the FDIC's policy objectives and would advance harmonization of resolution mechanisms on a global basis.

BCB provided a comment letter to the Office of the Comptroller of the Currency ("OCC") regarding the OCC's substantially similar proposed rule ("Letter").[3] BCB also shared the Letter with the Board of Governors of the Federal Reserve System ("Board") and noted that the comments shared in the Letter are also applicable to the Board's parallel proposed rule. We believe that the reasons articulated in the Letter proposing an extension of the exclusion provisions from the proposed rule for CCPs to central banks and sovereign entities are equally valid with respect to the FDIC's Proposed Rule. We therefore attach hereto and incorporate the Letter by reference noting that references in the Letter to OCC proposed rules 47.6 and 47.7 should be understood as references to FDIC Proposed Rules 382.5 and 382.7, respectively. We further note that the term "Covered Entities" as used in the Letter should be understood as referencing the term "Covered Entities" as used in the FDIC's Proposed Rule.

For all of the aforementioned reasons we request that the FDIC expand the scope of the exemption in section 382.7 of the Proposed Rule to include QFCs entered into with central banks and sovereign entities.

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BCB appreciates the opportunity to provide these comments. We hope that the FDIC finds our comments and proposal useful in its continuing deliberations on the implementation of contractual stays in financial contracts. Please do not hesitate to contact the undersigned if we can provide further information pertinent to the FDIC's work toward promulgating a final rule.

Respectfully submitted,

Sidnei Corrêa Marques
Central Bank of Brazil – Deputy Governor
Financial System Organization Office – DIORF

Reinaldo Le Grazie
Central Bank of Brazil – Deputy Governor
Monetary Policy - DIPOM

[3] 81 Fed. Reg. 55381 (August 19, 2016).

ANNEX

BCB comment to OCC relative Notice of Proposed Rulemaking: Mandatory Contractual Stay Requirements for Qualified Financial Contracts (OCC RIN No. 1557-AE05; Docket ID OCC-2016-0009)

BANCO CENTRAL DO BRASIL

October 18, 2016

Legislative and Regulatory Activities Divisions
Office of the Comptroller of the Currency
400 7th Street SW., Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219

By email: regs.comments@occ.treas.gov

Re: Notice of Proposed Rulemaking: Mandatory Contractual Stay Requirements for Qualified Financial Contracts (OCC RIN No. 1557-AE05; Docket ID OCC-2016-0009)

Ladies and Gentlemen:

Banco Central do Brasil ("BCB")[1] appreciates the opportunity to provide the Office of the Comptroller of the Currency (the "OCC") with comments and recommendations regarding the notice of proposed rulemaking (the "Proposed Rule") promulgated by the OCC regarding restrictions on qualified financial contracts ("QFCs") of U.S. global systemically important banking organizations ("GSIBs") and foreign GSIBs that operate in the United States (collectively, "Covered Entities").[2]

BCB generally supports the Proposed Rule's objectives of enhancing the resilience and the safety and soundness of federally chartered and licensed financial institutions by addressing concerns relating to the exercise of default rights of certain financial contracts that could interfere with the orderly resolution of certain systemically important financial firms. Indeed, as a central bank, we are encouraged by the efforts within the United States to help make the global banking system more stable, safe, and sound, which, in turn, will help make the global financial system more stable, safe, and sound.

Our comments in this letter address the Proposed Rule's Question 6: "Are there types of financial contracts that fall within the definition of covered QFC that could be excluded without compromising the policy objectives of the proposed rule?" To this question we answer in the affirmative. Specifically, section 47.7 of the Proposed Rule provides that a Covered Entity is not required to conform a covered QFC to which a central counterparty is a party. We believe the exclusion provisions of section 47.7 should be extended to apply to central banks and sovereigns. We believe a limited expansion of section 47.7's exemption to include central banks and sovereign entities would be both in keeping with the OCC's policy objectives and will better harmonize resolution mechanisms on a global basis. Our reasons for this proposal are detailed below.

[1] BCB is the central bank of Brazil. It was established on December 31, 1964 and, like other central banks throughout the world, is the principal monetary authority of the country.

[2] 81 Fed. Reg. 55381 (August 19, 2016).

I. Central Banks and Sovereigns Will Not Benefit From Section 47.6 of the Proposed Rule Because They Are Not Members of the ISDA 2015 Universal Protocol

Section 47.6(a) of the Proposed Rule provides that a covered QFC may permit the exercise of a default right with respect to the covered QFC if the covered QFC has been amended by the ISDA 2015 Universal Resolution Stay Protocol, including the Securities Financing Transaction Annex and Other Agreements Annex published by the International Swaps and Derivatives Association, Inc., as of May 3, 2016, and minor technical amendments thereto. As explained by the International Swaps and Derivatives Association, Inc. ("ISDA") in its comment letter to the Board of Governors of the Federal Reserve System ("Board") concerning the Board's notice of proposed rulemaking concerning "Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions," "Central banks and sovereigns are not ISDA members and were not a focus of the process that led to the development of the ISDA 2015 Universal Protocol."[3] BCB, for example, is neither a primary member nor an associate member, but is a subscriber member of ISDA, and did not participate in the development of the ISDA 2015 Universal Protocol. ISDA further notes in its letter that "It is unclear whether central banks or governmental entities would be permitted by applicable statutes or rules from entering into transactions on such terms (or adhering to a relevant ISDA protocol)."[4] Even if a strict legal bar on adhering to the ISDA 2015 Universal Protocol was absent, doing so might be against the policies and practices of central banks and sovereign entities. In fact, as ISDA notes, as of August 5, 2016, no central bank has adhered to the ISDA 2014 Resolution Stay Protocol or the ISDA 2015 Universal Protocol. Indeed, BCB has not adhered to the ISDA 2014 Resolution Stay Protocol or the ISDA 2015 Universal Protocol. Section 47.6(a)'s protocol compliance provision is thus generally not applicable and would not be of benefit to central banks and sovereigns and does not provide a viable mechanism by which central banks and sovereigns can transact with Covered Entities through covered QFCs without significant legal or policy changes made by central banks and sovereigns.

II. An Exclusion for Central Banks and Sovereigns Would Bring the OCC's Proposed Rule In Line With the Emerging Global Standard With Respect To Stay Regulations

Covered Entities (or GSIBs, as their name aptly describes) operate on a global basis. They have multiple subsidiaries or branch or agency offices that operate on a cross-border basis. It is therefore, and, rightly so, a regulatory goal for the leading financial jurisdictions throughout the world to attempt, where reasonably possible, to harmonize their laws and regulations regarding the resolution of Covered Entities. Consistency and coordination among international

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[3] Letter from Katherine Darras, General Counsel, International Swaps and Derivatives Association, Inc., to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System (Aug. 5, 2016), *available at* https://www.federalreserve.gov/SECRS/2016/August/20160826/R-1538/R-1538_080516_130418_401541610117_1.pdf.

[4] *Id.*

regulators is critical to avoid costly complexity, lack of predictability, and confusion that could result from Covered Entity subsidiaries being subject to different approaches to resolution and insolvency.

Regulatory authorities in other jurisdictions have already promulgated stay regulations that exempt central banks and sovereign entities. The stay regulations adopted in the United Kingdom by the United Kingdom Prudential Regulation Authority exclude contracts entered into with central banks and central governments (including any agency or branch of a central government). Similarly, the stay regulations promulgated in Germany exclude contracts entered into with central banks.

There does not appear to be a compelling reason to deviate from this emerging global standard given that multiple highly respected jurisdictions have already considered the policy issues associated with a central bank and sovereign entity exemption. In fact, doing so would create an unnecessarily fractured global framework for QFCs and an unnecessary market arbitrage. Furthermore, should the OCC not adopt the central bank and sovereign entity exemption adopted by other jurisdictions, there is an increased likelihood that jurisdictions currently developing their stay requirements will not offer the United States' central banking and sovereign entities with a stay exemption. The BCB, for example, is currently developing its own stay requirements. We therefore urge the OCC to broaden the exceptions in the final rule consistent with the approaches being taken in other jurisdictions in furtherance of international regulatory harmonization.

III. Covered Entities Will Lose Valuable Counterparties That Will Hinder Market Liquidity and Covered Entity Risk Management

The Proposed Rule creates a significant disincentive for central banks and sovereigns to enter into QFCs with Covered Entities in the United States. In many cases central banks and sovereigns may simply be unable to comply with the Proposed Rule's requirements given their own legal and policy restrictions. This could create an incentive for market participants (central banks and sovereigns with a significant volume of transactions and their counterparties) to transition their QFCs to other jurisdictions that have adopted a central bank and sovereign entity exemption. In such a circumstance, even if the BCB were able to address all legal and policy issues associated with adhering to the Proposed Rule's requirements with respect to QFCs with Covered Entities in the United States, BCB may nevertheless feel the need to move its sizeable QFC portfolio to other jurisdictions where other central banks and sovereign entities have moved their respective QFCs because of the decreased liquidity available in the U.S. market and increased liquidity available in the other markets. London's financial marketplace may prove to be a likely alternative for central banks and sovereign entities seeking enhanced liquidity following a passage of the Proposed Rule without a central bank and sovereign entity exemption. The potential withdrawal of central bank and sovereign participation in QFC transactions with Covered Entities in the United States will be to the detriment of all parties involved, especially considering the significant extent to which central banks and sovereign entities, in managing sovereign reserves, are providers of liquidity and serve as counterparties to QFCs utilized for Covered Entity risk management purposes, including during periods of market stress.

IV. Central Banks and Sovereign Entities Are Sensitive to Financial Stability Concerns

Central banks and sovereign entities are sensitive to financial stability concerns and the goals of resolvability and it should not be assumed that they will exhibit counterparty behavior that would undermine an orderly resolution as might a private counterparty motivated primarily by a profit maximizing incentive. In some instances sovereign counterparties are expected to take into account the broader resolution goals and global systemic stability considerations in any determination to exercise their contractual rights, thus reducing the concern that they would exercise their rights in a manner that would undermine resolvability or the financial stability of the United States. On the other hand, central banks managing pools of international reserves should at least have the option to protect the principal of invested funds in order to be able to use such funds to provide liquidity in their home markets at a time of financial stress. The BCB indeed was a source of financial stability during the recent global financial crisis and provided foreign exchange liquidity to foreign and domestic banks alike, without regard to any bank's home country. These efforts were possible given the ready availability of the BCB's reserve capital, and the Proposed Rule's stay provisions, with no central bank or sovereign entity exemption, would contravene similar efforts should they be necessary in the future, thus hindering, rather than supporting, global financial stability and international cooperation.

For all of the aforementioned reasons we request that the OCC expand the scope of the exemption in section 47.7 of the Proposed Rule to include QFCs entered into with central banks and sovereign entities.

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The BCB appreciates the opportunity to provide these comments. We hope that the OCC finds our comments and proposal useful in its continuing deliberations on the implementation of contractual stays in financial contracts. Please do not hesitate to contact the undersigned if we can provide further information pertinent to the OCC's work toward promulgating a final rule.

Respectfully submitted,

Sidnei Corrêa Marques
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