

January 26, 2021

Robert E. Feldman  
Executive Secretary  
ATTN: Comments  
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Chief Counsel's Office  
Attn: Comment Processing  
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**Re: Temporary Asset Thresholds; RIN 3064-AF67; Docket No. R-1731; RIN No. 7100-AG01; Docket ID OCC-2020-0044**

To Whom It May Concern:

Squire Patton Boggs, LLP (SPB) appreciates the opportunity to submit this comment letter on the Interim Final Rule on Temporary Asset Thresholds<sup>1</sup> (the IFR) issued by the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (Board), and the Office of the Comptroller of the Currency (OCC) (collectively, the Agencies).

As a threshold matter, SPB supports the timely implementation of the rule prior to the end of this year. It clearly will relieve, for the immediate, short-term, SPB's community banking clients of certain costs and compliance burdens that have arisen as result of the COVID-19 virus and the growth in assets generated by certain policy responses to the virus, including the Paycheck Protection Program (PPP).

However, we strongly recommend that the Agencies modify the IFR to conform the calculation of the asset threshold for purposes of the small issuer exemption in Regulation II with

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<sup>1</sup> Temporary Asset Thresholds, 85 Fed. Reg. 77345 (Dec. 2, 2020).

the asset calculations applied to other regulations. This modification is particularly important to community banks because the loss of the exemption will result in a significant increase in a bank's operating costs, which, in turn, will reduce the bank's ability to serve the credit needs of the communities in which it operates.

Prior to the issuance of the IFR, the small issuer exemption in Regulation II was calculated based upon a bank's assets<sup>2</sup> as of the end of each calendar year. Under the IFR, eligibility for the small issuer exemption<sup>3</sup> for calendar year 2020 will be based on the lesser of: (1) the bank's assets as of the end of the calendar year 2019; and (2) the bank's assets as of the end of the calendar year 2020. The preamble to the IFR illustrates how the change in the asset calculation for this exemption would apply to a community bank. That illustration shows that the bank would continue to fall within the exemption through six months of 2022. While this change provides some relief to community banks, it is not consistent with the statement in the preamble that the IFR "will permit community banking organizations, *through* December 31, 2021, to determine the applicability of certain asset-based regulatory thresholds using asset data as of December 31, 2019, if the organization's assets as of that date were less than its assets on the date as of which the applicability of a given threshold would normally be determined."<sup>4</sup> Applying this approach to the small issuer exemption under Regulation II would enable a community bank to remain within the exemption for the entirety of 2022 and the first half of 2023, not just the first half of 2022. Nor is the proposed approach for the small issuer exemption consistent with the changes made in other regulations addressed in the IFR. For example, the changes in the audit requirement for savings association holding companies permit using the lower of assets as of December 31, 2019, or the most recent fiscal year, prior to January 1, 2022, meaning that if a company exceeds that threshold on December 31, 2021, the company can use its assets as of December 31, 2019.

To address these disparities, we recommend that the calculation for the small issuer exemption in Regulation II be revised to provide that the asset size calculation for both 2020 *and* 2021 be based upon the lesser of: (A) The assets of the issuer, together with its affiliates, as of the end of the calendar year 2019; and (B) The assets of the issuer, together with its affiliates, as of the end of the calendar year preceding the date of the electronic debit transaction. This change would mean that a community bank would be able to remain under the exemption throughout the entirety of 2022, and compliance would begin in the middle of 2023, assuming the bank exceeds the threshold on December 31, 2022. Such a modification would be in accordance with the Agencies' stated intent of permitting community banking organizations to use asset data as of December 31, 2019 for thresholds *through* December 31, 2021.

Failure to address this inconsistency would harm the community banking organizations by substantially reducing revenues related to interchange transaction fees for electronic debit transactions. An extension through 2021 is appropriate and keeps in line with the Agencies' intent to provide temporary relief to community banking organizations to promote further lending and avoid significant transition costs that the organizations would otherwise face.

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<sup>2</sup> For purposes of this calculation, total assets includes the bank's assets combined with those of its affiliates.

<sup>3</sup> 12 C.F.R. § 235.5(a).

<sup>4</sup> 85 Fed. Reg. 77345, 77347-8 (emphasis added).

As the Agencies recognize, many community banking organizations have experienced an unexpected and sharp increase in assets since the beginning of the COVID-19 event. Much of this growth, especially growth related to the PPP lending, is likely to be temporary and does not accurately reflect a change in these organizations' longer-term risk profile. This rapid and unexpected growth is due to the instrumental role community banking organizations have played in the nation's financial response to the COVID-19 event. The relief the Agencies provide in the IFR ensures that community banking organizations are not subject to new and more stringent regulatory standards solely due to participating in these programs and supporting their communities in this unprecedented time.

Unfortunately, the COVID-19 event is not over. To that point, in December, after the Agencies issued this IFR, Congress passed a bill ensuring additional funding for COVID-related programs, including PPP. As the negative impact of COVID-19 on the economy, small businesses, and consumers continue, additional relief and programs may be necessary. Community banking organizations stand ready to continue to participate in these programs to assist consumers, small businesses, and the economy. Additionally, it will take considerable time for community banking organizations' balance sheets to more accurately reflect the organization's portfolio and risk and not their participation in these temporary programs. For example, the loan forgiveness process is cumbersome and lengthy for many PPP loans. To ensure that such organizations continue to not face new and significant regulatory burdens solely caused by participation in these programs and provide time for the organizations' balance sheets to accurately reflect their business, the Regulation II small issuer exemption temporary threshold should be extended to cover the end of calendar year 2021. Without an extension of the deadline, community banking organizations may make drastic decisions to ensure they continue to meet the small issuer exemption, including minimizing participation in future relief and stimulus programs. That is not a result that the Agencies or the community banking organizations intend.

Thank you for the opportunity to comment on the IFR. We look forward to working with the Agencies on this issue. If you would like to discuss this, please contact Jim Sivon ([james.sivon@squirepb.com](mailto:james.sivon@squirepb.com) or 202-262-4271).

Respectfully,

A solid black rectangular redaction box covering the signature of James Barresi.

James Barresi