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VIA EMAIL

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Attn: Comments
Comments@FDIC.gov

Re: Alternatives to Reference 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 Mr. Feldman:

Bank of China Limited, Midtown Branch ("BOCNY") appreciates the opportunity to comment on the proposed rule[1] published by the Federal Deposit Insurance Corporation (the "FDIC") seeking public comments on a proposed rule to amend its international banking regulations ("Part 347") consistent with Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and the FDIC's authority under Section 5(c) of the Federal Deposit Insurance Act (the "FDI Act"). In particular, BOCNY's comments are limited to the proposed amendments to Subpart B of Part 347, which would revise the FDIC's asset pledge requirement for insured U.S. branches of foreign banks. The Proposed Rule would remove references to external credit ratings in Subpart B and replace them with a standard of creditworthiness that has been adopted in other federal regulations that conform with Section 939A of the Dodd-Frank Act. With respect to the asset pledge requirement for insured U.S. branches of foreign banks, the Proposed Rule would, among other things, (i) add a new asset type and create a separate asset category in connection with the list of assets eligible for pledging and (ii) require that any assets pledged to the FDIC by insured U.S. branches of foreign banks satisfy a liquidity standard and be subject to a fair value discount. The Proposed Rule also contains some technical changes to Subpart B.

Although BOCNY supports some of the proposed changes to Subpart B outlined in the Proposed Rule, as discussed below, BOCNY has concerns about the necessity and the potential additional regulatory burden of certain of the proposed amendments to Subpart B.

[1] 81 Fed. Reg. 41877 (June 28, 2016) (the "Proposed Rule").

BACKGROUND

Bank of China Limited ("BOC"), a bank organized under the People's Republic of China, maintains two federal branches located in New York, New York that are insured by operation of the grandfathering provisions of the International Banking Act of 1978, as amended by the Foreign Bank Supervision Enhancement Act of 1991. As noted in the proposed rule, there are currently only ten remaining grandfathered insured U.S. branches of foreign banks (four federal branches and six state-licensed branches). BOCNY is the largest insured U.S. branch of a foreign, as measured by asset size. As of March 31, 2016, BOCNY had assets of approximately $57.82 billion, making it by far the largest U.S. insured branch. Based on the Federal Reserve's Report of Structure and Share Data for U.S. Banking Offices of Foreign Entities, the next largest insured branch as of March 31, 2016, had approximately $10.33 billion in assets, and the combined assets of all of the nine other insured branches totaled approximately $37.83 billion. Accordingly, the potential impact of the proposed changes to the asset pledge requirements under Subpart B of Part 347 could have an impact on BOCNY on a scale that is unique among the U.S. insured branches of foreign banks.

CREDIT AND LIQUIDITY STANDARDS

12 CFR § 347.209 establishes the asset pledge requirements for insured branches. Section 347.209(d) describes the types of assets that may be pledged. Under the existing regulations, certain of those assets (i.e., commercial paper, municipal general obligations, and notes issued by banks and thrift holding companies, banks or savings associations) must have credit ratings within the top two rating bands of a nationally recognized statistical rating organization, or NRSRO. In order to satisfy the mandate of Section 939A of the Dodd-Frank Act, the Proposed Rule would revise the definition of the asset types mentioned above by eliminating the references to credit ratings. In place of the credit ratings requirement, the Proposed Rule would implement an investment grade standard to assess credit quality of all types of eligible assets. The Proposed Rule proposes a definition of "investment grade" that requires an insured branch to determine whether the risk of default by the obligor is low and full and timely repayment of the principal and interest is expected. In addition, the Proposed Rule would introduce a new liquidity requirement by permitting only "highly liquid" assets to be pledged. An insured branch would be required to demonstrate that an instrument meets the "highly liquid" standard in order to be eligible to be pledged.

BOCNY believes that the proposed new "investment grade" and "highly liquid" requirements will significantly increase the operational burden on the branch. In spite of the fact that BOCNY has already been conducting analyses for the investment grade and liquidity of the securities BOCNY invests in, the new standards contained in the definitions of "investment grade" and "highly liquid" are general and require subjective determinations, and the Proposed Rule does not provide any clear guidance as to how such standards are to be met. Accordingly, BOCNY believes the introduction of the "investment grade" and "highly liquid" requirements as proposed would create additional uncertainty, thus adding to the increased burdens on BOCNY. Therefore, BOCNY requests that the FDIC provide clearer, more straight-forward and objective standards than the proposed "investment grade" and "highly liquid" standards.

With respect to proposed "highly liquid" requirement, BOCNY believes that this proposed new requirement is not required under Section 939A of the Dodd-Frank Act. BOCNY further believes that

the introduction of this new standard is not necessary in order to provide the Deposit Insurance Fund (the "DIF") protection against losses on insured deposit claims by depositors of U.S. branches of foreign banks. In our view, the nature of the types of assets that are eligible to be pledged under 12 CFR § 347.209, coupled with the requirement that such assets be "investment grade" (under a clear, objective standard) would provide adequate assurance that pledged assets will be sufficiently low risk and liquid. Therefore, BOCNY requests that the proposed new "highly liquid" requirement not be imposed.

FAIR VALUE DISCOUNT

In addition to imposing the proposed new "investment grade" and "highly liquid" requirements, the Proposed Rule also contains a proposal to require the discounting of pledged assets to reflect credit risk and market price volatility of the assets. Under the proposal, the method for discounting the values of pledged assets would involve a standardized haircut table that takes into account the Basel III risk weight for an asset and the remaining maturity of the asset. According to the proposed table, haircut percentages for pledged assets would range from 0% to 16%, depending on the risk weighting and remaining maturity. Under the Proposed Rule, insured branches would be required to update such valuations quarterly.

BOCNY believes that the full fair value of the types of assets eligible to be pledged under the existing risk-based assessment schedule already reflect the market values and provide sufficient protection to the DIF. In addition, the high eligibility standards imposed on assets pledged to the FDIC already ensure the high quality of those assets.

Additionally, the proposed fair value discount requirement would impose additional operational burdens on BOCNY, as we would be required to conduct the discounting calculations for each pledged asset on a quarterly basis, which we are currently not required to do. Also, based on our tentative calculations, the proposed fair value discount requirement would require BOCNY to pledge a considerable amount of additional eligible assets, resulting in increased costs for BOCNY.

Consequently, while the proposed fair value discount requirement would likely have a negligible impact on the protection of the DIF and the quality of pledged assets, the additional operational burden of conducting the fair value discount on a quarterly basis and the increased costs that would be placed on BOCNY to pledge additional assets in order to meet such proposed requirement would be significant. Therefore, BOCNY requests that the proposed fair value discounting requirement not be implemented.

WITHDRAWAL PROCEDURES

BOCNY notes that the proposed changes in the asset pledge requirements of Subpart B to Part 347, particularly the proposed new requirements for assets to be "investment grade" and "highly liquid". Over time, as the new requirements are implemented in practice, BOCNY may at some points have pledged assets that exceed the minimum requirements under Section 347.209. In such situations, BOCNY would seek to withdraw any excessive assets. In our experience, the current procedures for withdrawing pledged assets can be somewhat cumbersome and inflexible. BOCNY requests that the FDIC provide guidance regarding the process and requirements for withdrawing pledged assets in such

situations. BOCNY believes that the withdrawal procedures should be simpler and more flexible, particularly with respect to withdrawing any excess pledged assets. In particular, BOCNY suggests that insured branches be able to withdraw any excess assets upon the filing of each quarterly report without having to obtain approval from the FDIC.

ASSETS THAT MAY BE PLEDGED

The Proposed Rule would add cash as a new asset type that insured U.S. branches of foreign banks may pledge and create a new category expressly for debt securities issued by government sponsored entities ("GSEs"). BOCNY supports the proposed addition of cash as a new eligible asset type and the creation of a new category for debt securities for GSEs. With respect to the pledge of cash, BOCNY requests that the FDIC confirm or clarify that an insured branch would be permitted to receive interest on any such pledged cash. BOCNY notes that 12 CFR § 347.209(e)(10) provides that a foreign bank may retain any interest earned with respect to assets pledged (unless the FDIC by written notice prohibits retention of interest by the foreign bank). In our view, it is not clear how this provision might affect the ability of BOCNY to earn and retain interest on any cash that is pledged.

OTHER TECHNICAL REVISIONS

The Proposed Rule would amend 12 CFR § 347.209(d)(7) to clarify that an insured U.S. branch of a foreign bank may not pledge a note issued by a branch or agency of a foreign bank that has the same country of domicile as the pledging bank in order to avoid potential same-country risks represented by the branch and agencies as direct extensions of foreign banks.

BOCNY notes that the sovereign credit rating of China is very high (rated AA-, according to Standard & Poor's rating services, as of March 31, 2016), which is indicative of strong economic growth potential and the healthy fiscal condition of China. Accordingly, BOCNY believes the same-country risk caused by the pledge by BOCNY of notes issued by a branch or agency of another Chinese bank would be very low. BOCNY would recommend the implementation of an objective standard when evaluating same-country risks given that the risk profiles of different countries can vary significantly.

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BOCNY appreciates the opportunity to provide its comments to the FDIC, and we thank you for consideration of our comments above. If you should have any questions, please do not hesitate to contact me.

Sincerely,

Wenjian Fang
Executive Vice President and Chief Risk Officer
Bank of China, New York Branch