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Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, S.W.
Suite 3E-218
Washington, D.C. 20219
Docket ID OCC– 2019–0023

Robert E. Feldman
Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
RIN 3064–AF08

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Docket No. R–1682; RIN 7100–AF62

Re: Margin and Capital Requirements for Covered Swaps Entities

Ladies and Gentlemen:

The esoteric financial products known as derivatives are so risky that legendary investor Warren Buffett once called them "financial weapons of mass destruction."[1] Derivatives were central to the near-failures and bailouts of the giant hedge fund Long-Term Capital Management in 1998 and the insurer AIG in 2008.[2] A rogue derivatives trader bankrupted

[1] Lawrence Lewitinn, *How Buffett Used 'Financial Weapons of Mass Destruction' to Make Billions of Dollars*, Yahoo Finance, Apr. 27, 2016, available at: https://finance.yahoo.com/news/how-buffett-used--financial-weapons-of-mass-destruction--to-make-billions-of-dollars-175922498.html. Separately, the report of the Financial Crisis Inquiry Commission described Mr. Buffett's view that derivatives "'accentuated enormously, in my view, the leverage in the system.' He went on to call derivatives 'very dangerous stuff,' difficult for market participants, regulators, auditors, and investors to understand—indeed, he concluded, 'I don't think I could manage' a complex derivatives book." Fin. Crisis Inquiry Comm'n, The Financial Crisis Inquiry Report 49 (U.S. Gov't Printing Ofc., 2011).

[2] *See* Paul L. Lee, A Retrospective on the Demise of Long-Term Capital Management, Blue Sky Blog, Columbia Law School, Sept. 10, 2018, available at: http://clsbluesky.law.columbia.edu/2018/09/10/a-retrospective-on-the-demise-of-long-term-capital-management/; *see also* Carrick Mollenkamp, Serena Ng, Liam Pleven & Randall Smith, *Behind AIG's Fall, Risk Models Failed to Pass Real-World Test*, WALL ST. J., Oct. 31, 2008, available at https://www.wsj.com/articles/SB122538449722784635.

the British bank Barings in 1995, and JPMorgan's notorious "London Whale" trader lost more than $6 billion trading credit derivatives in 2012.[3]

Such "trading activities at large, complex institutions can span multiple legal entities and regulatory authorities."[4] In particular, international banking organizations run their derivatives businesses out of foreign legal entities because they are more lightly regulated in other countries.[5] LTCM booked its trades in the Cayman Islands, AIG and JPMorgan booked theirs in London.[6] Banks consolidate all of their trades by making trades between affiliated entities, from their foreign office to their federally insured banks located in the U.S., so they can access all of the company's financial resources and have the support of the U.S. government.[7]

Though these trades are booked in overseas entities, the risks often boomerang back to the home countries where the parent companies are located.[8] CFTC Chairman Gary Gensler once observed:

> During a default or crisis, risk knows no geographic border … [I]f a run starts on one part of a modern financial institution, almost regardless of where it is around the globe, it

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[3] Charles A. Samuelson, *The Fall of Barings: Lessons for Legal Oversight of Derivatives Transactions in the United States*, 29 CORNELL INT'L L.J. 767 (1996); *see also* Patricia Hurtado, *The London Whale*, BLOOMBERG, Feb. 23, 2016, available at: https://www.bloomberg.com/quicktake/the-london-whale.

[4] *See* Office of Inspector General, The Board Should Enhance Its Supervisory Processes as a Result of Lessons Learned From the Federal Reserve's Supervision of JPMorgan Chase & Company's Chief Investment Office, at 14 (Oct. 17, 2014) available at: https://oig.federalreserve.gov/reports/2015-0030_-_Document_To_Release.pdf.

[5] *See* Charles Levinson, *U.S. Banks Moved Billions of Dollars in Trades Beyond Washington's Reach*, REUTERS, Aug. 21, 2015, available at: https://www.reuters.com/investigates/special-report/usa-swaps/. This is true for both specific swaps regulations, as well as general supervisory practices; for example, during the 2012 London Whale episode, the OCC reportedly had five total staff in London, compared to 65 staff embedded in JPMorgan's New York office alone.

[6] *See* Testimony of Gary Gensler, Chairman, Commodity Futures Trading Commission before the U.S. Senate Banking, Housing and Urban Affairs Committee, Feb. 14, 2013, available at: https://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-131

[7] While the proposed rule states that the sole motivation for this practice is centralizing risk management, there are surely other rationales for structuring trades in this manner. *See* Office of Inspector General, *supra*, at 14, n. 14 (noting that there are "multiple explanations for this risk transfer and booking practice, ranging from management's desire to consolidate risk in a single entity to tax advantages"). For example, the Federal Reserve's Primary Dealer Credit Facility made loans to support the repo trades of U.K.-based subsidiaries of the London-based subsidiaries of U.S. investment banks Goldman Sachs, Morgan Stanley, and Merrill Lynch, and the London-based subsidiary of the U.S. universal bank Citigroup. *See* James Felkerson, "$29,000,000,000,000: A Detailed Look at the Fed's Bailout by Funding Facility and Recipient," at 18, Levy Economics Institute (Working Paper 698, Dec. 2011), available at: http://www.levyinstitute.org/pubs/wp_698.pdf.

[8] *See* Levinson, *supra* (quoting Professor Simon Johnson that "during a crisis … there is almost always that link back to the core money center banks at home").

> invariably means a funding and liquidity crisis rapidly spreads and infects the entire consolidated financial entity.[9]

Indeed, the global financial crisis demonstrated this point, that a bank with a large amount of foreign assets and large intrafinancial system liabilities is a potential source of spillover risk, in vivid detail.[10]

In just one example, Lehman Brothers' complex web of affiliates included Lehman Brothers International (Europe) (LBIE), an unlimited liability company in London with 130,000 outstanding swaps contracts and extensive positions in mortgage securities.[11] Investors realized the firm's assets were tied up in the British bankruptcy process, helping to initiate a run on other U.S. financial institutions with similar foreign affiliates. Lehman's demise was a vivid illustration that, in the words of Federal Reserve Governor Daniel Tarullo, "while internationally active banks live globally, they may well die locally."[12]

Anyone even remotely familiar with the troubling history of derivatives trading by global financial institutions should be deeply concerned by the agencies' proposal to roll back an important safeguard implemented after the financial crisis, and leave the U.S. taxpayers that back our nation's IDIs once again exposed to the risks of derivatives.

I. The proposed rule undermines post-crisis financial reforms aimed at mitigating the risks of derivatives.

Based upon the lessons learned from the experiences of the financial crisis, and to prevent future unanticipated problems, Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection (Dodd-Frank) Act created significant, new protections for the derivatives market. The law required the registration of swap dealers and major swap participants, clearing and reporting of swap transactions, and enhanced risk management and capital at central clearinghouses.

It authorized the creation of new rules to govern capital and margin for uncleared swaps, including between affiliated entities. Affiliated entities are generally exempt from the clearing requirement. Without central clearing, the primary method of addressing the risk of swaps among affiliates is to require the posting and collecting of initial margin. The law

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[9] Testimony of Gary Gensler, *supra*.

[10] *See* Meraj Allahrakha, Paul Glasserman & H. Peyton Young, Systemic Importance Indicators for 33 U.S. Bank Holding Companies: An Overview of Recent Data 6, Office of Financial Research Brief 15-01 (2015), available at https://www.financialresearch.gov/briefs/files/2015-02-12-systemic-importance-indicators-for-us-bank-holding-companies.pdf.

[11] *See* Gary Gensler, "Keynote Address on the Cross-Border Application of Dodd-Frank Swaps Market Reforms," before the 2012 FINRA Annual Conference, May 21, 2012.

[12] *See* Governor Daniel K. Tarullo, "Regulation of Foreign Banking Organizations," at 10, Nov. 28, 2012.

further amended section 23A of the Federal Reserve Act to subject derivatives transactions to that law's limitations on transactions between affiliates.[13]

Financial regulators worked diligently to implement the Dodd-Frank Act with the goal of strengthening financial institutions and reducing systemic risk. In 2015, the three banking agencies issued final margin and capital rules for bank swap entities, which require insured depository institutions (IDIs) to collect, but not post, initial margin on their trades with affiliates and subsidiaries.[14]

Unfortunately, the proposal before the agencies today would roll back these important financial protections instituted in response to the financial crisis, by eliminating the requirement for IDIs to collect initial margin in its trades with affiliates.[15]

II. Protecting the insured bank from financial risks is an important goal of banking regulation.

Our national banking law and policy has long aspired to protect banking entities' taxpayer-backed functions.[16] Unfortunately, that has not always been the case in practice. As former FDIC Chairman Sheila Bair has noted, "[d]uring the crisis, FDIC-insured subsidiary banks became the source of strength both to the holding companies and holding company affiliates."[17]

Margin is the first line of defense for any trade, and a derivative that is not backed by margin is essentially an unsecured loan. If a trading partner runs into financial trouble, it could be tempted to walk away from its derivative payments, even if it's owned by the same parent company. Though margin helps reduce the risks of loss in these scenarios, it is not foolproof, because it is calculated based upon projections that contain embedded assumptions. We know that the models that sought to measure the risks of derivatives transactions at the largest financial institutions before the financial crisis had significant shortcomings.[18]

Adding to the uncertainty, because derivatives are products of financial engineering, they expose banking organizations to more risk than transactions that are tied to underlying,

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[13] *See* 12 U.S.C. § 371c(b)(7)(G).

[14] *See* Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74,840 (Nov. 30, 2015).

[15] *See* 84 Fed. Reg., at 59,975.

[16] For example, bank holding companies are intended to serve as a source of strength to their subsidiaries. *See* 12 C.F.R. § 225.4(a)(1).

[17] Letter from the Honorable Sheila Bair, Chairman, Federal Deposit Insurance Corporation, to Senator Susan Collins, May 7, 2010.

[18] *See* Mollenkamp, Ng, Pleven & Smith, *supra*.

real world economic activity.[19] As a result, the relative legal, regulatory, and contractual values of derivatives depend heavily on accounting measurements, financial models, and associated projections of risks. Accounting-based measures that are highly subjective can mask risk; for example, using different methods to the calculate the value of derivative exposures can greatly alter the size of a bank's balance sheet.[20]

As your agencies noted in 2015, the Dodd-Frank Act's margin requirements for uncleared swaps help ensure the safety and soundness of swap entities and are appropriate for the heightened risks associated with non-cleared swaps.[21] Requiring IDIs to collect initial margin from their affiliated counterparties maintains the safety and soundness of the IDI by ensuring that they have a layer of protection for their trades, makes the risks transparent between affiliated counterparties, and promotes robust risk management.[22] The benefits of collecting margin are especially meaningful when a regulated swap dealer transacts with another legal entity that is more lightly regulated or less well capitalized.

Interaffiliate margin requirements does not just reduce IDIs' exposure to risks from swap transactions with securities affiliates that might be less well capitalized. It also protects both the IDI and its nonbank affiliates from sudden requirements to post margin through last-minute collateral calls in the event of the credit downgrade, financial distress, or insolvency. Sudden collateral swings exacerbate financial distress for the counterparty that is posting, and failing to receive adequate collateral can create stress at the counterparty that is collecting. For example, AIG was not required to post initial margin for its OTC trades, an arrangement that had an "enormous impact" on the global financial crisis.[23] Margin calls from AIG's counterparties created funding problems,[24] and

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[19] *See*, *e.g.*, Saule T. Omarova, *The Quiet Metamorphosis: How Derivatives Changed the "Business of Banking"*, 63 U. OF MIAMI L. REV. 1041, 1101 (2009)("Derivative instruments allow counterparties a virtually unlimited degree of flexibility in structuring each individual transaction, with respect to the composition of the underlying assets, methods of calculating payment obligations, and other terms, each of which may easily multiply both potential losses and potential gains under the instrument.").

[20] The difference in treatment of netting between the U.S. and Europe, for example, can cause a bank's equity ratios to vary by as much as 44 percent. *See* Anat R. Admati & Martin F. Hellwig, THE BANKERS' NEW CLOTHES: WHAT'S WRONG WITH BANKING AND WHAT TO DO ABOUT IT, at Ch. 6 (Princeton University Press 2013) (showing that the ratio of equity to total assets for JPMorgan Chase at the end of 2011 was about 8% if assets were measured according to U.S. GAAP accounting standards but only 4.5% by IFRS accounting standards used in most European countries, resulting from the disparate treatment of derivatives).

[21] *See* 80 Fed. Reg., at 74,843; *see also* 7 U.S.C. § 6s(e)(3)(A) (the purpose of margin and capital for uncleared swaps is to "offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of swaps that are not cleared").

[22] *See* S. Rep. No. 111-176 (2010), at 33 ("While large losses are to be expected in derivatives trading, if those positions are fully margined there will be no loss to counterparties and the overall financial system and none of the uncertainty about potential exposures that contributed to the panic in 2008.").

[23] Fin. Crisis Inquiry Comm'n, *supra*, at 141; *see also id.*, at 50.

[24] *See id.*, at 344 (noting that AIG's collateral calls from its credit default swap counterparties "soared" from June to September 2008).

the eventual, $182 billion bailout was necessary in part to protect AIG's counterparties from experiencing distress themselves.[25]

III. The stated justifications for the agencies' proposal are wanting.

In rolling back the interaffiliate margin requirement, the proposed rule only cites "supervisory experience" as a justification.[26] The proposal further argues that the initial margin requirement is driving banks to borrow "increasing amounts of cash in the debt markets to fund eligible collateral, placing additional demands on their asset-liability management structure[.]"[27] Banks have choices about how they can fund their operations, and they don't need to take on more debt.[28] They can issue new equity or retain some of the record profits or the billions of dollars they are paying out to their shareholders to post as cash collateral.[29]

The proposal also states that requiring the collection of initial margin from affiliates "put[s] U.S. banking firms at a competitive disadvantage."[30] In fact, the Comptroller recently crowed that "banks in the United States have flexed their competitive muscle[,]" earning 62 percent of global investment fees, 70 percent of merger fees, and 60 percent of stock commissions in 2018.[31] The largest U.S. banks' investment banking businesses have "strongly supported economic activity," and they have been "actively engaged in derivatives clearing activities."[32] They are still highly dominant in the derivatives markets.[33] Indeed, their capitalization is a source of strength—not weakness—that has

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[25] *See id.*, at 376-78.
[26] 84 Fed. Reg., at 59,976.
[27] *Id.*
[28] *See*, *e.g.*, Anat R. Admati, *The Compelling Case for Stronger and More Effective Leverage Regulation in Banking*, 43 J. OF LEGAL STUDIES 35 (2014).
[29] *See* Jesse Hamilton, *Banks Crushed Profit Record With $237 Billion in 2018, FDIC Says*, BLOOMBERG, Feb. 21, 2019, available at: https://www.bloomberg.com/news/articles/2019-02-21/banks-crushed-profit-record-with-237-billion-in-2018-fdic-says; *see also* Ken Sweet, *Banks Announce Billions in Share Buybacks After Fed Approval*, ASSOC. PRESS, June 27, 2019, available at: https://www.usnews.com/news/business/articles/2019-06-27/fed-approves-buyback-dividend-plans-for-all-largest-banks.
[30] 84 Fed. Reg., at 59,976.
[31] Joseph Otting, The Return from the Brink and the Rise of Banks in the United States, Int'l Banker, Nov. 26, 2019, available at: https://internationalbanker.com/banking/the-return-from-the-brink-and-the-rise-of-banks-in-the-united-states/.
[32] FDIC Director Martin J. Gruenberg, "An Essential Post-Crisis Reform Should Not Be Weakened: The Enhanced Supplementary Leverage Capital Ratio", at 5, Sept. 6, 2018, available at https://www.fdic.gov/news/news/speeches/spsep0618.pdf.
[33] *See* Ofc. of the Comptroller of the Currency, Quarterly Report on Bank Trading and Derivatives Activities, *supra*, at Table 1, Table 2 (showing that the four largest insured banks account for almost 90 percent of the notional derivatives at insured banks and thrifts, and that the five largest BHCs account for almost 90 percent of the notional derivatives at all BHCs).

enabled them to capture market share from international competitors,[34] will help them to lend throughout another economic downturn, and gives them the balance sheet capacity to absorb additional derivatives business in the event that one of their competitors is unable to continue providing services to customers. Even if that were not the case, failure to properly oversee one segment of the financial system—be it another industry or country—is not an excuse to deregulate the others. These types of the race-to-the-bottom arguments are not new, and your agencies should know well enough by now to reject them.[35]

The proposal further argues that "because other jurisdictions (as well as the U.S. market regulators) do not consistently apply swap margin rules to interaffiliate swaps, the Rule's imposition of initial margin requirements for interaffiliate swaps may have provided limited systemic risk benefits[.]"[36] The essence of this argument is that, because other agencies aren't meeting their responsibilities, your agencies may as well shirk your responsibilities as well. This is another classic race-to-the-bottom argument. The right way to address systemic risk is for you to push your counterparts at other agencies in the U.S. and in other countries to raise their standards, not to lower your own.

Finally, the proposal claims that, because the covered entities are subject to sections 23A and 23B, and implementing Regulation W, initial margin is unnecessary.[37] But the inter-affiliate component of the 2015 final rule complements and enhances sections 23A and 23B, as amended by Dodd-Frank, helping to protect the IDI by ensuring that transactions between IDIs and their affiliates are conducted at arms' length, with adequate protection for the IDI. In fact, the 2015 the rule goes farther by applying these standards to swap trades with certain affiliates and subsidiaries that are not covered by the section 23B arms-length requirements.[38] Recent experience shows that these additional safeguards are needed because section 23A alone is not an impenetrable firewall, and therefore not a comprehensive protection in isolation.[39]

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[34] *See*, *e.g.*, Martin Arnold, *How U.S. Banks Took Over the Financial World*, FIN. TIMES, Sept. 18, 2018, available at: https://www.ft.com/content/6d9ba066-9eee-11e8-85da-eeb7a9ce36e4; *see also* Justin Baer & Max Colchester, *U.S. Banks Take Global Lead*, WALL ST. J., July 30, 2015, available at: https://www.wsj.com/articles/u-s-banks-take-global-leadu-s-banks-take-global-lead-1438300606; *see also* Editorial, *Banking and Nothingness*, THE ECONOMIST, Oct. 17, 2015, available at: https://www.economist.com/finance-and-economics/2015/10/17/banking-and-nothingness.

[35] *See* Tom Braithwaite, Justin Baer & Aline van Duyn, *Banks Anxious Over Fed Regulations*, FIN. TIMES, May 4, 2011 ("One senior official accused banks of trying to lobby for softer rules in Europe with the aim of persuading the U.S. to soften its proposals to avoid an unlevel playing field."); *see also* Admati & Hellwig, supra, at Ch. 12.

[36] 84 Fed. Reg., at 59,976.

[37] *See* 84 Fed. Reg., at 59,976.

[38] *See* Margin and Capital Requirements for Covered Swap Entities, 79 Fed. Reg. 57,348, 57,359 (Sept. 24, 2014).

[39] *See* Saule T. Omarova, *From Gramm-Leach-Bliley to Dodd-Frank: The Unfulfilled Promise of Section 23A of the Federal Reserve Ac*t, 89 N.C. L. REV. 1683 (2011). For example, in the depths of the financial crisis,

That is not to say that margin rules cannot, or should not, alter market participants' incentives and behavior. According to the 2015 final rule:

> It is likely that the behavior of swap market participants, including affiliate counterparties, will respond to incentives created by these swap margin requirements. Such changes could have a dramatic effect on the pattern of affiliate swap transactions which would itself have a significant impact on the amounts of initial margin that are ultimately collected on inter-affiliate transactions.[40]

Your agencies' prior statement recognizes the potential for firms to change their behavior in advantageous ways and suggests that those changes could impact, and likely reduce, the amount of margin required due to fewer inter-affiliate swaps trades subject to the bank swap rules. That would reduce interaffiliate exposures, with the added benefit of improving resolvability by redistributing assets throughout the consolidated legal structure, making them less exposed to potential cross-border issues during future financial crises.

IV. Conclusion

In addition to the concerns outlined above, the proposal also raises an issue of procedural fairness. While some commenters may have the ability to set aside the requisite time to file a comment to the proposed rule, the 30-day deadline may be prohibitive for others with less time and fewer resources. Given the potential implications of this rule, including the substantial financial benefit for Wall Street and the increased risks to the public, and the esoteric nature of this subject matter,[41] the agencies should extend the comment period to allow for greater public participation, discussion, and debate in the rulemaking process.

When three of the four largest U.S. banks have derivatives exposures that exceed their total capital—one of them two times over—it is not the time to weaken any of these rules.[42] By all accounts, the economy is strong and the banking industry just experienced

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Goldman Sachs and Morgan Stanley converted to bank holding companies. The Federal Reserve granted a 23A exemption to Goldman Sachs Bank in 2009, to move its multi-purpose derivatives dealer into its insured bank affiliate. Likewise, Morgan Stanley converted to a bank holding company, and received a 23A exemption for its derivatives business.

[40] 80 Fed. Reg., at 74,893.

[41] *See* Graham Steele, *The $40 Billion Gift That Wall Street Doesn't Deserve*, AM. BANKER, July 16, 2019, available at: https://www.americanbanker.com/opinion/the-40-billion-gift-that-wall-street-doesnt-deserve.

[42] *See* Office of the Comptroller of the Currency, Quarterly Report on Bank Trading and Derivatives Activities, at 21, graph 5 (June 2019) available at: https://www.occ.gov/topics/capital-markets/financial-markets/derivatives/pub-derivatives-quarterly-qtr1-2019.pdf.

another record year of profitability.[43] Trading revenue is high relative to overall bank revenues, and compliance costs are near 20-year lows.[44] In particular, it is worth noting that derivatives trading revenue at IDI subsidiaries has generally held steady as a percentage of overall revenue at the consolidated bank holding company level since 2011.[45] All of this is to say that, if banks are being constrained by having to post margin, they are certainly not behaving like it.

This interaffiliate margin proposal is particularly concerning when one considers it in the broader context of the various other proposals that would weaken aspects of risk-based capital, leverage, stress testing, and resolution planning rules that are meant to reduce the likelihood and costs of bank failures.[46] The totality of these changes constitute the "kind of low-intensity deregulation, consisting of an accumulation of non-headline-grabbing changes" that former Governor Tarullo recently raised as a source of concern.[47]

As the Senate committee report noted, "[m]ore collateral in the system, through margin requirements, will help protect taxpayers and the economy from bailing out companies' risky derivatives positions in the future."[48] Strong interaffiliate initial margin requirements mitigate systemic risk, improve resolvability, and help to reduce the "too big to fail" problem. If banks have weaker financial resources and their trading partners default on their promises, they will come calling to the FDIC for support. [49] Taxpayers will have to

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[43] *See* FDIC Quarterly Banking Profile, Fourth Quarter 2018, available at https://www.fdic.gov/bank/analytical/qbp/2018dec/qbp.pdf, at 1.

[44] *See* Mark Whitehouse, *Banks Sure Don't Look as If They Need Relief*, BLOOMBERG, Feb. 25, 2019, available at: https://www.bloomberg.com/opinion/articles/2019-02-25/banks-sure-don-t-look-as-if-they-need-relief-from-dodd-frank.

[45] *See* Office of the Comptroller of the Currency, Quarterly Report on Bank Trading and Derivatives Activities, at 5 (Dec. 2018), available at: https://www.occ.gov/topics/capital-markets/financial-markets/derivatives/pub-derivatives-quarterly-qtr3-2018.pdf.

[46] *See* Final Rule, Standardized Approach for Calculating the Exposure Amount of Derivative Contracts, Nov. 19, 2019; *see also* Final Rule, Regulatory Capital Rule: Revisions to the Supplementary Leverage Ratio to Exclude Certain Central Bank Deposits of Banking Organizations Predominantly Engaged in Custody, Safekeeping and Asset Servicing Activities, Nov. 19, 2019; *see also* Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 84 Fed. Reg. 59,230 (Nov. 1, 2019); *see also* Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies, 84 Fed. Reg. 59,032 (Nov. 1, 2019); *see also* Resolution Plans Required, 84 Fed. Reg. 59,194 (Nov. 1, 2019); *see also* Amendments to the Capital Plan Rule, 84 Fed. Reg. 8,953 (Mar. 13, 2019); *see also* Amendments to the Regulatory Capital, Capital Plan, and Stress Test Rules, 80 Fed. Reg. 18,160 (Apr. 25, 2018); *see also* 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).

[47] Daniel K. Tarullo, "Taking the Stress Out of Stress Testing," at 3, May 21, 2019.

[48] S. Rep. No. 111-176, at 31.

[49] Section 11 of the Federal Deposit Insurance Act provides derivatives counterparties with the ability to terminate, liquidate, or accelerate their derivatives claims. However, derivatives contracts generally are not subject to enforcement by the receiver. *See* 12 U.S.C. § 1821(e)(8)(A). As a result of this provision, the FDIC

cover the FDIC's losses and Main Street community banks will be asked to help replenish the FDIC's Deposit Insurance Fund. In short, we will be running the risk of another bailout.

For these reasons I urge you to withdraw your proposed amendments to the 2015 interaffiliate margin rules for covered swaps entities. Thank you for considering my views on this important matter.

Sincerely,

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Deposit Insurance Fund – and ultimately, the U.S. taxpayer – could be required to backstop the insured bank's derivatives losses in the event that the bank's margin and capital cushions prove inadequate. These potentially risky, largely over-the-counter, transactions are now being directly backstopped by the FDIC's Deposit Insurance Fund – and ultimately the United States Treasury. This provides a "safety net" subsidy – a variety of implicit guarantees that their profits will be enjoyed by investors and the costs will be paid by society, including "deposit insurance and a central bank able and willing to serve as a 'lender of last resort'" – for the biggest derivatives dealers. Paul A. Volcker, Remarks before the Statutory Congress of the European People's Parties, Dec. 9, 2009.