June 25, 2018

VIA ELECTRONIC SUBMISSION

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Amendments to the Regulatory Capital, Capital Plan, and Stress Test Rules (Federal Reserve Board Docket No. R-1603, RIN 7100 AF-02)

Ladies and Gentlemen:

The Financial Services Forum (the "Forum")[1] appreciates the opportunity to submit this letter to the Board of Governors of the Federal Reserve System (the "FRB") on the notice of proposed rulemaking (the "Proposal") to establish a stress capital buffer ("SCB") framework, which would be accomplished by amending the FRB's capital plan rule, capital and stress testing rules, and the proposed Stress Testing Policy Statement.[2] The proposed changes are applicable to all of our member institutions, the U.S. global systemically important bank holding companies ("GSIBs"). Ultimately, the ability of our member institutions to serve as a leading source of lending and investment for U.S. consumers, businesses, investors, and communities critically depends on the efficient calibration of regulation that accounts for and that balances effective costs and benefits. Financial regulations that do not adhere to these key principles result in an inefficient financial system that misallocates capital in a way that can have a detrimental effect on the businesses and households that we

[1] The Financial Services Forum is an economic policy and advocacy organization whose members are the chief executive officers of the eight largest and most diversified financial institutions headquartered in the United States. Forum member institutions are a leading source of lending and investment in the United States and serve millions of consumers, businesses, investors, and communities throughout the country. The Forum promotes policies that support savings and investment, deep and liquid capital markets, a competitive global marketplace, and a sound financial system.

[2] 83 Fed. Reg. 18160 (April 25, 2018).

serve. In this letter, we describe how the Proposal should be revised to adhere to these principles.

Executive Summary

We commend the Proposal's aim to simplify the capital regime applicable to firms that are subject to the capital plan rule and Comprehensive Capital Analysis and Review ("CCAR") program by integrating CCAR's supervisory stress test results with ongoing capital requirements. Integration of the stress testing and capital regimes to achieve a more unified, simplified, and harmonized capital regime is a laudable goal that we support. Nonetheless, we believe there are changes that should be made to the Proposal to achieve more effectively the FRB's policy objectives, without exacerbating existing problems with the capital planning and stress testing framework and creating duplicative requirements. In addition, the Proposal raises broader policy issues about the capital framework that the FRB should address in the near term. We offer the following summary observations and recommendations:

- **The Proposal underscores the importance of a broader review of the FRB's capital planning and stress testing programs, with a goal of returning capital management decisions to boards of directors**. Capital management and capital planning are core responsibilities for our boards of directors. Both the Proposal and the FRB's capital planning requirements unnecessarily diminish the board's role in discharging this responsibility. Although capital planning plays an important role in assessing whether a firm's planned distributions are broadly consistent with the FRB's overall goal of promoting strong and resilient banking organizations, overly prescriptive rules that inhibit our boards of directors' ability to make decisions about returning capital to our shareholders are inconsistent with sound corporate governance principles.

- **Moreover, the lack of transparency regarding stress testing models and scenario design exacerbates volatility introduced by the SCB and further reduces the board's role in capital planning**. Clearer and more transparent processes are needed to improve the capital planning process. Firms that face stress testing scenarios far more severe than reasonably anticipated will respond by setting larger capital buffers than are necessary for safe and sound management and that thereby inhibit firms' ability to support the broader economy. Further, unpredictable and opaque stress testing model and scenario designs lead to volatility and, therefore, ever larger capital buffers as firms seek to ensure they are able to avoid restrictions on their capital distributions. As a result of these dynamics, our boards of directors cannot meaningfully engage in the capital planning process.

- **The Proposal presents the FRB with an opportunity to recalibrate and bring efficiencies to the post-crisis regulatory framework**. A number of

> rules adopted since the financial crisis are designed to address similar risks. Many of these requirements have become overlapping; their existence alongside each other ignores their commonality and the overlap and inefficiency they present. For example, stacking the SCB as an incremental requirement on top of the GSIB surcharge highlights the need to recalibrate and remove redundancies in the GSIB surcharge in light of numerous reforms since the financial crisis. In addition, the SCB, GSIB surcharge, and countercyclical capital buffer ("CCyB") are duplicative and can be streamlined to avoid unnecessary overlap. Further, CCAR includes a Global Market Shock ("GMS") component. Because the GMS is not required to be aligned with CCAR's adverse macroeconomic scenarios, CCAR's results can be unduly severe. All of these requirements should be reevaluated, with a quantitative assessment that is subject to public comment, and recalibrated to bring efficiencies to the post-crisis capital framework.

We have focused this letter on issues that are key priorities for our member institutions to help ensure that the final rule supports continued economic growth. We also support the joint comments submitted by The Clearing House Association L.L.C., the Securities Industry and Financial Markets Association, and the Financial Services Roundtable.

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To expand on the executive summary, below is a more detailed discussion that:

(1) suggests the FRB revisit its role in capital planning and improve the transparency of its stress testing models and scenario designs, all of which would help to reduce volatility in the FRB's stress testing process and return key aspects of the process to a banking organization's board of directors;

(2) suggests that the FRB reevaluate the GSIB surcharge and, pending any such reevaluation, exclude the GSIB surcharge from the standardized approach capital conservation buffer;

(3) recommends streamlining duplicative requirements in the SCB, the GSIB surcharge, and the CCyB, which are amplified by the Proposal; and

(4) requests that the FRB conduct, and subject to public comment, a fulsome analysis of the effective costs and benefits of the Proposal beyond the impact of minimum capital requirements.

The FRB should revisit its role in capital planning and improve the transparency of its stress testing models and scenario designs, with a goal of reducing volatility in the FRB's stress testing process and returning key aspects of the process to boards of directors. The FRB has recognized for some time that "[a] firm's board of directors is ultimately responsible and accountable for the firm's capital-related decisions and for capital planning."[3] The FRB also has recognized that effective boards of directors "focus on establishing a firm-wide corporate strategy"[4] and assess "whether the firm's significant policies, programs, and plans are consistent with the firm's strategy."[5] The Proposal and the FRB's capital planning requirements undermine these fundamental board responsibilities by effectively making capital-related decisions within the FRB's purview in the first instance. Although the FRB has a stake in ensuring that banking organizations distribute capital to shareholders in a manner that does not jeopardize the safety and soundness of the organization, there should be a balance that primarily entrusts the board with this responsibility, with the FRB retaining the supervisory discretion to intervene only when demonstrably needed. The Proposal, however, does not effectively strike this balance.

The evolution of the FRB's stress testing practices illustrates the potential to find a more appropriate balance. During the financial crisis, the FRB turned to stress testing under the Supervisory Capital Assessment Program ("SCAP") to "determine

[3] FRB, Federal Reserve Supervisory Assessment of Capital Planning and Positions for LISCC and Large and Complex Firms, Supervision and Regulation Letter 15-18 (Dec. 18, 2015).

[4] *See* 82 Fed. Reg. 37219, 37224 (Aug. 9, 2017) (proposed guidance on supervisory expectations for boards of directors).

[5] *Id.* at 37225.

potential losses at the largest firms if the prevailing stress severely worsened and to restore confidence in the financial sector."[6] While the original SCAP program was focused on quickly restoring capital adequacy and market confidence during a time of severe economic stress, the CCAR program has become much broader in scope. CCAR is an annual, point-in-time exercise under which firms submit a capital plan and the FRB subsequently prescribes, on an *ex-ante* basis, firms' quarter-to-quarter capital distributions using processes and models that provide neither firms nor the marketplace with transparency that is a predicate to establishing confidence.[7] The *ex-ante* nature of this exercise means that ongoing capital distributions do not account for changing macro and firm-specific conditions, effectively removing the ability of a board of directors to engage in a dynamic, ongoing capital planning process. Instead, firms and their boards of directors should have flexibility to adjust quarterly distributions in response to changing conditions. Rather than relying on expanded versions of the extreme policy measures (*i.e.*, SCAP) that may have been necessary in the depths of the financial crisis, the FRB should recognize that the ongoing capital framework can strike a more appropriate balance between the original safety and soundness rationale for supervisory stress testing and the core responsibility of boards of directors to oversee capital distributions on a dynamic basis.

Furthermore, the Proposal exacerbates the lack of transparency and volatility of CCAR by incorporating the results of the FRB's supervisory stress tests into a new standardized capital conservation buffer equal to the sum of: (1) the SCB; (2) the GSIB surcharge; and (3) the CCyB, if any. Due to the opacity and volatility of the FRB's supervisory stress testing program, boards of directors cannot meaningfully engage in capital planning. Instead, this exercise is driven by the FRB's models and scenarios, which determine a firm's SCB and, in turn, determine the capital conservation buffer (a limit on capital distributions). To strike a more appropriate balance between the original safety and soundness rationale for supervisory stress testing and the core responsibility of boards of directors to oversee capital distributions, we make the following recommendations.

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[6] 83 Fed. Reg. at 18161.

[7] The limitations contemplated by the SCB effectively are prescriptions. Although the Proposal introduces a process for a firm to request reconsideration of its SCB, the Proposal does not articulate a clear legal standard for such a request, leaving a firm to guess why and under what circumstances the FRB might grant requests for reconsideration. The lack of transparency in the FRB's scenario design process and stress testing models further exacerbates this uncertainty. As a consequence, a firm effectively must assume that any request for reconsideration to the FRB will be denied, making the FRB's initial SCB determination all the more important. Therefore, at very least, the FRB should articulate a clear legal standard that provides deference to a banking organization seeking reconsideration and makes clear the hurdle a banking organization must meet to have its SCB reconsidered.

First, the FRB should eliminate any requirement for prior approval of capital distributions beyond those contemplated by a firm's capital plan, provided that a firm meets its capital conservation buffer requirements. Said differently, so long as a firm exceeds the FRB's minimum capital requirements and buffers, the FRB should not constrain the firm's ability to make dynamic decisions regarding capital distributions in response to changing economic and market conditions. Both the Proposal and the current capital plan rule place restrictions on our ability to make distributions beyond those contemplated by our capital plans. In particular, we are prohibited from exceeding, during the relevant period in the planning horizon, the aggregate planned capital distributions (above a *de minimis* amount) described in our capital plans, irrespective of our financial and capital position, unless the FRB provides prior approval.[8] This requirement effectively imposes a non-transparent overall limit on the amount of our capital distributions that is not appropriately sensitive to our financial performance and is inconsistent with the central purpose of the capital framework: to ensure that regulated firms have sufficient amounts of capital to withstand losses and continue providing credit to the economy. A firm with capital in excess of the FRB's requirements—inclusive of all relevant buffers—should be permitted to make capital distributions without receiving prior regulatory approval. The current construct artificially distorts the ability of firms to provide credit to the economy. This result stunts growth without any justified financial stability benefit and clearly should be avoided.

Second, the FRB should remove the assumption from the SCB calculation that a firm would pay four quarters of dividends and all preferred dividends in times of stress. There is no capital-related rationale for this assumption, which increases a firm's buffer requirements and, in turn, the amount of capital a firm must hold to avoid restrictions on capital distributions. These assumptions are duplicative of the capital rule's restrictions on distributions should a firm fail to meet its buffer requirements, as the effect of dividends will be fully reflected in capital levels once they are made. Although the FRB states that the assumptions would incentivize robust capital planning, the capital rule's restrictions on distributions already provide that incentive, leading to unnecessary overlap. Indeed, the benefits of an integrated capital rule—the goal of the Proposal—can be realized only when the FRB fully harmonizes CCAR and the capital rule.

Third, the FRB should remove the qualitative objection from the capital plan rule. Although the FRB should be expected to evaluate the qualitative aspects of a firm's capital planning process, such review should be conducted through ordinary supervisory review (*e.g.*, examinations and targeted horizontal review) rather than a separate, heightened process under the capital plan rule, which carries a consequence of limiting board decisions regarding capital distributions, rather than being more narrowly focused on any qualitative remediation that may be required. The FRB has

[8] 12 C.F.R. § 225.8(g)(1)(iii).

acknowledged as much in eliminating the qualitative objection for large, non-complex firms and FRB officials have suggested that the same should be done for a larger range of firms that are subject to the capital plan rule.[9] We believe that the same reasoning applies to all firms subject to the FRB's capital planning requirements; therefore, the qualitative objection should be eliminated.

Finally, as mentioned above, by incorporating the results of the supervisory stress test into the SCB, the Proposal would increase the significance of the FRB's supervisory models and scenarios. As a result, the FRB should seek to improve the transparency of its scenario and model designs. This could be done through: (1) subjecting the supervisory stress scenarios to the notice-and-comment rulemaking process; (2) amending its existing Policy Statement on the Scenario Design Framework for Stress Testing to develop an empirically grounded framework to establish "guardrails" or outer boundaries on the severity of the supervisory stress scenarios;[10] or (3) adopting a clear policy statement that more closely tethers GMS to the adverse macroeconomic scenario. All of the suggestions made above have the same overriding objective—to restore the ability of a firm's board of directors to make dynamic capital planning decisions that are not unnaturally constrained by the inaccurate supervisory assumptions or the lack of transparency and corresponding volatility of the FRB's stress testing process. In addition, the Proposal would eliminate the assumption in the FRB's Stress Testing Policy Statement that balance sheets grow under stressed conditions and, instead, assume a constant balance sheet. We strongly support the assumption of a constant balance sheet and believe it is generally more accurate than the assumption of balance sheet growth.

The FRB should reevaluate the GSIB surcharge and, pending any such reevaluation, exclude the GSIB surcharge from the standardized approach capital conservation buffer. The Proposal raises important questions about the calibration and role of the GSIB surcharge, which we urge the FRB to reconsider. In particular, introduction of an SCB requirement that would apply, in addition to the GSIB surcharge, as part of the standardized approach capital conservation buffer makes

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9 Former FRB Governor Daniel K. Tarullo, Departing Thoughts, Speech at Princeton University (April 4, 2017) ("So I think the time may be coming when the qualitative objection in CCAR should be phased out, and the supervisory examination work around stress testing and capital planning completely moved into the normal, year-round supervisory process, even for the G-SIBs"); 82 Fed. Reg. 9308 (Feb. 3, 2017) (adopting changes that define large, non-complex firms as those that have total consolidated assets of at least $50 billion, but less than $250 billion, nonbank assets of less than $75 billion, and that are not U.S. GSIBs); FRB Vice Chairman Randal K. Quarles, Testimony Before H. Comm. Fin. Services, 115th Cong. (April 17, 2018) ("Recently, we have solicited comment on whether that approach should be applied to a broader range of firms. I believe that our supervisory goal of ensuring a robust capital planning process at most firms can be achieved using our normal supervisory program combined with targeted horizontal assessments without compromising the safety and soundness of the financial system.").

10 12 C.F.R. Pt. 252, App. A.

more acute the need to evaluate whether the GSIB surcharge itself is appropriately calibrated and provides a level playing field for U.S. firms when compared to other jurisdictions. Further to this point, the GSIB surcharge, as implemented by the FRB, should be updated to reflect significant improvements to the resiliency and resolvability of our firms since its adoption in July 2015, as acknowledged by FRB Vice Chairman Quarles during Congressional testimony on April 17, 2018.[11] When doing so, the FRB should undertake, and request public comment on, a quantitative assessment of the proposed changes to the GSIB surcharge, including how it interrelates to the SCB and other requirements (discussed below), similar to the white paper prepared in 2015 when the GSIB surcharge was finalized.[12]

This update is needed now because the GSIB surcharge is based on the assumption that it was necessary to "reduce the likelihood that the failure or material financial distress of [a GSIB] will again pose a threat to U.S. financial stability" and to decrease the likelihood of failure in the first instance.[13] This dual-rationale of improving resiliency and resolvability of GSIBs also has been used to justify other post-crisis regulations, which have resulted in duplicative regulatory requirements that address the same risks, as discussed below.

As a result, the GSIB surcharge as currently implemented is miscalibrated and imposes costs that outweigh the incremental benefits. In this case, the surcharge unnecessarily raises costs that impede the ability of our member institutions to provide credit to support growth of the real economy. As Vice Chairman Quarles has emphasized, at this stage in our nation's economic recovery, these types of impediments could imperil the sustainability of economic growth.[14] FRB Chairman Jerome Powell has made a similar point, noting the potential for "laws, regulations, and supervisory practices [to] be adjusted in a way that preserves the gains in safety and soundness but helps financial institutions devote as much of their resources as possible to supporting economic growth."[15] Consequently, we agree with Vice Chairman Quarles's statement that the FRB should consider whether it is possible to

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[11] Testimony of FRB Vice Chairman Randal K. Quarles Before the H. Comm. on Fin. Services (April 17, 2018) ("House Testimony").

[12] *See* FRB, *Calibrating the GSIB Surcharge* (July 20, 2015).

[13] 80 Fed. Reg. 49082, 49092 (Aug. 14, 2015).

[14] An Assessment of the U.S. Economy, Speech Before 34th Annual NABE Economic Policy Conference (Feb. 26, 2018) (noting that the "sustainability of the recent upturn in growth will depend importantly" on developments in factors such as capital investment).

[15] Brief Remarks at The Global Finance Forum (April 20, 2017) (also expressing his support for adjustments "designed to enhance the efficiency and effectiveness of regulation without sacrificing safety and soundness or undermining macroprudential goals").

achieve its stated financial stability objective "using fewer tools."[16] The main reasons the GSIB surcharge has become redundant and needs to be recalibrated are the following.

- The GSIB capital surcharge does not reflect the enhancements to resiliency, liquidity, and resolvability that have been achieved since the surcharge was adopted, such as: enhancements to living wills; minimum margin and capital requirements related to non-cleared swaps and security-based swaps; total loss-absorbing capacity ("TLAC") requirements; qualified financial contract ("QFC") contractual stay requirements; and, improved supervisory practices.[17]

- The FRB's capital planning and stress testing programs already are designed to capture risks that are particularly acute for GSIBs, *e.g.*, the GMS and the large counterparty default scenario ("LCPD"). As a result, any incremental losses contemplated by the GMS and LCPD that ultimately increase a firm's minimum capital requirements are duplicative of the GSIB surcharge because the surcharge also depends directly on a firm's trading book and derivative exposures. In addition, the effect of the GMS is magnified further even without the GSIB surcharge, because firms cannot recognize, in the FRB's stress testing framework, any write-down of trading asset values to reflect the GMS.

- In addition, when adopting the GSIB surcharge, the FRB stated it would periodically reevaluate the method 2, "gold-plated" version[18] that it uses "[t]o ensure changes in economic growth do not unduly affect firms' systemic risk scores."[19] The FRB, however, in the Proposal is going in the opposite

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[16] FRB Vice Chairman Randal K. Quarles, Early Observations on Improving the Effectiveness of Post-Crisis Regulation, Speech Before Amer. Bar Ass'n Banking Law Comm. (Jan. 19, 2018) ("Amer. Bar Ass'n Speech") (also noting that "if we have a choice between two methods of equal effectiveness in achieving a goal, we should strive to choose the one that is less burdensome for both the system and the regulators").

[17] For example, Vice Chairman Quarles has stated that the GSIBs have made "substantial progress" with their living wills to improve their resolvability. House Testimony. In addition, minimum margin and capital requirements related to non-cleared swaps and security-based swaps were finalized in late 2015, 80 Fed. Reg. 74840 (Nov. 30, 2015); TLAC requirements for GSIBs were finalized on January 24, 2017, 82 Fed. Reg. 8266 (Jan. 24, 2017); and QFC stay requirements were finalized on September 12, 2017, 82 Fed. Reg. 42882 (Sept. 12, 2017).

[18] The practice of setting U.S. standards to be more stringent than the international standards the U.S. banking agencies helped negotiate is sometimes referred to as "gold-plating." In the United States, bank holding companies identified as GSIBs under method 1 also must calculate their systemic risk scores under a separate method 2, which gold-plates the Basel Committee-based method 1 standard and typically results in a higher surcharge.

[19] 80 Fed. Reg. at 49088.

direction, as the Proposal would exacerbate the importance of the gold-plated surcharge without undertaking the review and recalibration necessary to ensure that economic growth is not unduly punitive to firms' GSIB scores. Further, method 2 relies on a flawed methodology to calculate a firm's use of short-term wholesale funding, underscoring the need to reconsider method 2.

In sum, now is the appropriate time to revisit the GSIB surcharge so as to avoid hindering economic growth, bring efficiencies to the post-crisis regulatory framework, and recalibrate the gold-plating represented by method 2. Until such time that the GSIB surcharge calculation methodology is recalibrated, however, we urge the FRB to exclude the GSIB surcharge from the standardized approach capital conservation buffer. To maintain the status quo for the aggregate capital requirements while this reevaluation is ongoing, the FRB could set a floor based on the existing capital levels required today (including all minima and buffers).

The SCB, the GSIB surcharge, and the CCyB impose duplicative requirements that should be streamlined. The Proposal seeks to address risks already covered by other prudential requirements. These overlapping standards should be streamlined to bring efficiencies to the FRB's regulatory framework. For example, both the SCB and the CCyB are designed to be countercyclical. As a result, concerns that a cycle of economic expansion is advanced and could be trending towards a period of contraction potentially will result in increases in both the SCB and the CCyB. Having two separate and independent components of the capital conservation buffer (the SCB and CCyB) that are countercyclical is duplicative and unnecessary. As a further example, the GSIB surcharge increases in response to a firm increasing its capital markets activities. And, all GSIBs are subject to the LCPD and GMS (which is based on their capital markets activities) as a part of their stress tests, which can lead to an increase in a firm's SCB as capital markets activities increase. Again, this result leads to duplicative and unnecessary capital requirements in which capital markets activities are doubly penalized. The capital framework should address all of these issues in a unified and holistic fashion that does not result in duplicative requirements. Further, as noted above, when evaluating how to streamline the capital framework, the FRB should address all of these points in a quantitative assessment, similar to the one that was done with respect to the 2015 GSIB surcharge rule, and this assessment should be subject to public comment.[20]

The FRB should conduct, and subject to public comment, a fulsome analysis of the effective costs and benefits of the Proposal beyond the impact of minimum capital requirements. FRB officials have publicly articulated a commitment to conducting fulsome analyses of the impact of its rules,[21] yet the Proposal does not contain any

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[20] *See* FRB, *Calibrating the GSIB Surcharge* (July 20, 2015).

[21] Amer. Bar Ass'n Speech ("[W]e have an opportunity to improve the efficiency, transparency, and simplicity of regulation. By efficiency I mean the degree to which the net cost of

serious analysis of the effective costs of the Proposal beyond citing its potential capital impact. Simply stating the potential impact on minimum capital requirements likely underestimates the overall economy-wide costs of the Proposal, particularly in light of the opacity of the FRB's stress testing processes. That is, the lack of transparency into the FRB's stress testing models and scenario design methodology encourages firms to hold additional capital beyond regulatory minima in order to avoid limitations on capital distributions. Thus, the effective cost of the FRB's capital and stress testing framework includes the cost of retaining this additional capital, which results from the structure of the Proposal and its supporting regulatory architecture.[22]

The Proposal also would result in various additional costs that are not addressed by a focus on the impact on minimum capital requirements. In particular, the Proposal does not consider the costs resulting from firms being unnecessarily constrained to distribute capital even when they maintain capital ratios well in excess of all required minima and buffers. Further, the Proposal does not compare the SCB's implementation to stress buffer implementation in other jurisdictions, information necessary to considerations of international competitive equality; for example, the SCB's current formulation can result in greater capital requirements as compared to the Basel Committee's buffers. The FRB's rules either should be designed to avoid these effective costs or, alternatively, the FRB should take this into account when evaluating the impact of the rule and determine that the effective costs justify the benefits of the rule. Further, the capital estimates that are currently cited in the Proposal only relate to a period of economic expansion. Full consideration of the Proposal's impact demands that due attention be paid to the potential impact of the Proposal's requirements during an economic contraction. This is especially important in light of the fact that capital requirements are most likely to be constraining and restrict lending during a period of economic contraction.

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Thank you for considering these comments. Please feel free to contact the undersigned (KFromer@fsforum.com) with any questions.

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regulation—whether in reduced economic growth or in increased frictions in the financial system—is outweighed by the benefits of the regulation.").

[22] This dynamic is exemplified by the Dodd-Frank Act stress test results released on June 21, 2018. These results show significant variability and unpredictability, which leads to overcapitalization that should be taken into account in the FRB's quantitative assessments.

Respectfully submitted,

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The Financial Services Forum