A SUMMARY OF THE FEDERAL RESERVE'S SUPERVISORY AND REGULATORY PRIORITIES DURING THE PAST FOUR YEARS AND INTO THE FUTURE

SCOTT G. ALVAREZ[*]

The Priorities over the Past Four Years

The COVID-19 pandemic during this past year has had a devastating effect on the U.S. and world economies, by some measures greater than those caused by the financial crisis of 2007–2009.[1] It is not surprising, therefore, that the highest priority of the Federal Reserve during the past year has been to help reduce the adverse economic effects of the COVID-19 pandemic on consumers and businesses. And the Federal Reserve has used all its tools—including its supervisory tools as well as its monetary policy and emergency powers—to that end.[2]

Fortunately, the Federal Reserve's supervisory and regulatory priorities during the period between the 2007–2009 financial crisis and the 2020 pandemic played an important and constructive role in reducing the potential adverse effects of the COVID-19 pandemic on the U.S. economy and financial system. During that period, the Federal Reserve worked with other federal agencies—especially the OCC and FDIC—to improve the resilience and financial strength of the nation's banking firms and to implement the enhanced supervisory standards

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[*] Scott Alvarez currently teaches the Banking Structure and Regulation course in the Banking and Finance LLM program at Boston University School of Law. Previously, he was an attorney for the Board of Governors of the Federal Reserve System for 36 years, and served as General Counsel to the Board of Governors from 2004–2017.

[1] Lora Jones et al., *Coronavirus: How the Pandemic Has Changed the World Economy*, BBC (Jan. 24, 2021), https://www.bbc.com/news/business-51706225 [https://perma.cc/X52M-HQCB] (explaining that the pandemic has impacted the world economy through reduced stock prices, unemployment, and recessions in many countries).

[2] Jeffrey Cheng et al., *What's the Fed Doing in Response to the COVID-19 Crisis? What More Could It Do?*, BROOKINGS INST. (Jan. 25, 2021), https://www.brookings.edu/research/fed-response-to-covid19/ [https://perma.cc/MLY7-977B] ("The Federal Reserve stepped in with a broad array of actions to limit the economic damage from the pandemic, including up to $2.3 trillion in lending to support households, employers, financial markets, and state and local governments.").

required by the Dodd-Frank Act.[3] In particular, the Federal Reserve developed robust capital stress testing requirements for large banking organizations; adopted a range of capital buffer requirements, with higher capital buffers for the largest banking firms; required large banking firms to monitor, test, and maintain buffers to cover short term liquidity needs; and required large banking organizations to reduce reliance on short-term wholesale funding.[4] Those efforts helped the U.S. banking system—and in particular, large banking organizations—be in a strong financial position able to handle the pressures, losses and borrowing needs of consumers and businesses during the COVID-19 pandemic without the significant bank failures experienced during the financial crisis of 2007–2009.[5]

Ensuring that the banking industry—in particular the largest banking organizations in the U.S.—maintains high capital, robust liquidity, and strong risk management can be expected to continue to be the highest supervisory and regulatory priority of the Federal Reserve in the future.

While the Federal Reserve has focused on improving and maintaining the resilience of the largest banking firms and the stability of the U.S. financial system as a whole, the Federal Reserve has also taken a number of actions during the past four years to reduce burden on smaller banking organizations. Those actions included exempting smaller banking firms from many of the increased standards imposed on larger banking organizations.[6] The Federal Reserve also implem-

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[3] *See generally* Martin Neil Baily et al., *The Impact of the Dodd-Frank Act on Financial Stability and Economic Growth*, 3 RUSSELL SAGE FOUND. J. SOC. SCI. 20, 20–21 (2017) ("Dodd-Frank established the Consumer Financial Protection Bureau (CFPB), increased capital and other prudential requirements, augmented oversight of financial institutions, and created new resolution procedures to safely wind down institutions when they fail.").

[4] *Id.* at 41 (describing "capital buffers, stress testing, liquidity, and long-term debt holdings").

[5] *See, e.g.*, Martha C. White, *10 Years Ago, Lehman Brothers Went Bankrupt and Triggered a Recession. Could It Happen Again?*, NBC NEWS (Sept. 14, 2018, 2:38 PM), https://www.nbcnews.com/business/economy/10-years-ago-lehman-brothers-went-bankrupt-triggered-recession-could-n909546 [https://perma.cc/X935-FXUH] (discussing the historic collapse of Lehman Brothers and the potential for a similar collapse within the modern economy).

[6] Press Release, Board of Governors of the Federal Reserve System, Agencies Issue Final Rule to Streamline Regulatory Reporting Requirements and Commit to Further Review of Reporting Burdens for Small Institutions (June 17, 2019), https://www.federalreserve.gov/newsevents/pressreleases/bcreg

ented the regulatory reduction requirements of the Economic Growth, Regulatory Relief, and Consumer Protection Act enacted in 2019.[7] Those provisions allowed the Federal Reserve and the other federal banking agencies to reduce a variety of regulatory burdens on banking firms with less than $100 billion in total assets.[8] The Federal Reserve also used its authority under the Dodd-Frank Act to better tailor and reduce some regulatory requirements on banking organizations with assets between $100 billion and $250 billion.[9]

In addition, during the past four years the Federal Reserve completed several revisions to legal requirements it has long been studying. These include adopting modest revisions that improved the transparency of the Federal Reserve's rules governing the definition of control of banking firms, which will help investors structure investments in banking firms.[10]

In conjunction with other regulatory agencies, the Federal Reserve also recently adopted modest changes to the rules governing

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[7] Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, 132 Stat. 1296 (codified at scattered sections of 12, 15, 20, 31, 38, 42, 50 U.S.C.).

[8] *See, e.g.,* 12 U.S.C. § 248(s) (2018) (raising the size cutoff for supervisory and regulatory fee assessment from $50 Billion to $100 Billion); 12 U.S.C. § 5365(j) (2018) (raising the size cutoff for the application of leverage requirements from $50 Billion to $250 Billion).

[9] 12 C.F.R. § 246.1 (2021) ("This part implements provisions of section 318 of the Dodd-Frank Act … to adjust the amount charged to assessed companies with total consolidated assets between $100 billion and $250 billion to reflect any changes in supervisory and regulatory responsibilities …"); Federal Reserve System, Supervision and Regulation Assessments of Fees for Bank Holding Companies and Savings and Loan Holding Companies with Total Consolidated Assets of $100 Billion or More, 85 Fed. Reg. 78949 (Dec. 8, 2020) (codified at 12 C.F.R. § 246 (2020) (adjusting regulatory requirements for banks with $100 billion to $250 billion in assets).

[10] Federal Reserve System, Control and Divestiture Proceedings, 85 Fed. Reg.18,427 (Apr. 2, 2020) (codified at 12 C.F.R. pts. 225 and 238) (discussing control of banking entities).

margin requirements for swaps,[11] and modest changes to the regulations that implement the so-called Volcker Rule governing proprietary trading actions and venture capital investments by banking firms.[12] The Federal Reserve also made some modest revisions to the way Federal Reserve examiners will interact with boards of directors of banks. These changes are intended to reduce what had been growing expectations by examiners that boards of directors take more responsibility for the health of a banking organization from senior management of the firm.

During the past decade, the Federal Reserve has also increased its focus on how technology has changed the way banking products and services are provided to consumers and businesses.[13] The Federal Reserve has long supported innovation in providing access to financial products and services by the firms it supervises. Over the past few years, the Federal Reserve has increased its efforts to sponsor workshops and conferences and to make available staff resources designed to encourage and support financial innovation. The Federal Reserve has also worked internally and with members of the banking industry to foster development of a speedier, ubiquitous and technologically advanced payments system.[14]

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[11] Margin and Capital Requirements for Covered Swap Entities, 12 C.F.R. pts. 45, 237, 349, 624, and 1221 (2020) (requiring capital and margin requirements for entities engaging in covered swaps).

[12] Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 12 C.F.R pts. 44, 248, 351, 75, and 255 (2020) (prohibiting certain relationships between banks and covered funds, and now containing an exception allowing banks to make larger investments in venture capital funds).

[13] *See, e.g.*, Jerome H. Powell, *Financial Innovation: A World in Transition*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., (Oct. 18, 2017) https://www.federalreserve.gov/newsevents/speech/powell20171018a.htm (discussing the need for retail banking innovation and the challenges involved in meeting that need).

[14] *See* Service Details on Federal Reserve Actions to Support Interbank Settlement of Instant Payments, 85 Fed. Reg. 48,522 (Aug. 11, 2020) (describing FedNow as a "new service [that] will support banks' provision of end-to-end instant payment services and will provide infrastructure to promote ubiquitous, safe, and efficient instant payments in the United States.").

Regulatory and Supervisory Priorities over the Next Four Years

During the next four years, ensuring that banking organizations—especially the largest banking organizations—maintain strong capital, liquidity and risk management are likely to remain the supervisory and regulatory priorities of the Federal Reserve. The Federal Reserve is likely to resist efforts by large banking firms to reduce capital and liquidity requirements, and, instead, limit changes to minor recalibrations that are designed to improve the effectiveness and strength of current capital and liquidity requirements.

The Federal Reserve recently announced its intention to revise its current rules implementing the Community Reinvestment Act, which have not been revised in 25 years.[15] The Federal Reserve has long believed that banking firms have an important responsibility to help ensure that all consumers and communities have equal access to credit and other banking services. Accordingly, the Federal Reserve will likely take a careful and measured approach that includes broad public input and results in changes that measurably increase access to credit and banking products for LMI and minority individuals, businesses and communities.

Conclusion

The Federal Reserve is historically less affected by changes in Administrations than other agencies, largely because the primary mission of the Federal Reserve is monetary policy—which traditionally has been most successful when conducted independently of the political powers—and because the relatively large size of the Board and long terms of its members provide some insulation from changes in Administrations.[16] As a result, the Federal Reserve is likely to

[15] *See* Press Release, Board of Governors of the Federal Reserve System, Federal Reserve Board issues Advance Notice of Proposed Rulemaking on an approach to modernize regulations that implement the Community Reinvestment Act (Sept. 21, 2020), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200921a.htm (announcing the intention to "modernize the regulations that implement the Community Reinvestment Act").

[16] Peter Conti-Brown, *The Institutions of Federal Reserve Independence*, 32 YALE J. ON REG. 257 (2015) (explaining the varied systems in place to insulate the Federal Reserve from changes in presidential administrations and the many reasons why a sitting president might reappoint a Chair who is his political opposition).

maintain its current regulatory and supervisory priorities and to take a steady and incremental approach to its regulatory actions during the next several years, as it has during the past.