



December 20, 2016

Robert deV. Frierson, Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

*Re: Physical Commodities: Complementary Activities, Merchant Banking Activities, and Other Activities of Financial Holding Companies (Docket No. 1479 AND RIN 7100 AE-10)*

Dear Sir:

Amazon Watch (AW) is pleased that the Federal Reserve Board (the Board) is considering taking a narrower view of the permissible commodities activities that Financial Holding Companies (FHCs) are allowed to engage in. AW shares the concerns of members of Congress, other advocates, academics, and regulators about the overbroad scope of activities that the Board is currently permitting FHCs to engage in, pursuant to language in the Gramm-Leach-Bliley Act (GLB). In particular, we are concerned by the environmental and social risks of these activities, and we urge the Board to more fully account for the full scope of such activities.

AW is a nonprofit organization founded in 1996 to protect the rainforest and advance the rights of indigenous peoples in the Amazon Basin. We partner with indigenous and environmental organizations in campaigns for human rights, corporate accountability and the preservation of the Amazon's ecological systems.

## Introduction: All Social & Environmental Risks Must Be Considered

Investigators studying the effects of GLB have noted that allowing bank holding companies to be involved in “complementary activities” and “merchant banking” has led to an enormous expansion of their involvement in the entire chain of the commodities market, from production to transport to storage, as well as trading in the financial products related to those markets. This expansion has also opened the door to their use of this freedom to apparently manipulate prices

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and create safety and soundness risks.<sup>1</sup> As former Senator Jim Leach, one of the GLB's authors, has said, "I assume no one at the time would have thought it would apply to commodities brokering of a nature that has recently been reported."<sup>2</sup>

The fact that banks have the power to engage in these activities in this way is a danger not just to markets, but to those affected by those markets. The reality is that the language of the GLB has permitted FHCs to dramatically expand their balance sheet exposures by engaging in activities that present risks not just to the stability of financial institutions -- and by extension the financial system as a whole -- due to major commodity price fluctuations<sup>3</sup> but also due to the social conflicts stemming from many such commodity production activities, not to mention the direct risks to the environment, climate, and communities directly affected by such activities. For example, a bank could artificially drive up the price of, say, crude oil, in an attempt to justify a drilling project while failing to account for the major ecological and cultural damage it would cause.

We understand that the Board has begun to recognize this and therefore has looked into the potential catastrophic risk that commodity holdings and activities could pose to the banks under the Oil Pollution Act of 1990 (OPA), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and the Clean Water Act (CWA). However, it is our understanding that the Board has not taken under consideration the impact on the environment more generally or the human rights consequences from displacement caused by mining, extraction, and the like. We believe that banks have no business financing or owning commodities and assets that harm the environment or indigenous communities, both because of the social and moral necessity to protect them, and the economic, social, and climate risks generated by the harm caused to them.

Major banks around the world have themselves acknowledged the environmental and social risks involved in many of their activities through their involvement with the Equator Principles. And on November 19th, 72 major US companies, including several banks, sent an open letter urging President-elect Trump not to follow through on his threats to withdraw the US from the Paris Climate Agreement.<sup>4</sup> But such voluntary initiatives do not go nearly far enough. Scientists

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<sup>1</sup> Matt Taibbi, "The Vampire Squid Strikes Again: The Mega Banks' Most Devious Scam Yet", *Rolling Stone*, 12 February 2014, <http://www.rollingstone.com/politics/news/the-vampire-squid-strikes-again-the-mega-banks-mostdevious-scam-yet-20140212>.

<sup>2</sup> Ibid.

<sup>3</sup> See, e.g., Michael J. Moore, How Congress Helped Save Goldman Sachs From Itself, *Bloomberg*, 28 September 2015, <https://www.bloomberg.com/news/articles/2015-09-29/how-congress-helped-save-goldman-sachs-from-glencore-envy>.

<sup>4</sup> Hiroko Tabuchi, "U.S. Companies to Trump: Don't Abandon Global Climate Deal," *The New York Times*, 16 November 2016, <http://www.nytimes.com/2016/11/17/business/energy-environment/us-companies-to-trump-dont-abandon-global-climate-deal.html>.



around the world have indicated that commitments made thus far by state parties to the Paris climate agreement will not keep average global temperature rise below the agreed 2 degree Celsius threshold, let alone the desired 1.5 degree target.<sup>5</sup> To achieve this, much more needs to be done, urgently, by state both and non-state parties.

Furthermore, many of the banks that are members of the Equator Principles continue to finance projects like the Dakota Access Pipeline, which has clear social risks to the Standing Rock Sioux community and their livelihoods, as well as to the Missouri River watershed. You've surely seen the massive protests over the Dakota Access Pipeline in North Dakota, and the direct targeting of the 17 banks providing \$2.5 billion in financing for the pipeline construction with public letters, protests at headquarters and branches, and campaigns urging customers to close accounts. Those letters and protests have called attention to the financial, social, and environmental risks of that particular project, and highlighted how intertwined its environmental, social and financial risks are. As a new study from the Center for Biological Diversity shows, existing pipelines in North Dakota have spilled crude oil and other hazardous liquids at least 85 times since 1996 — an average of four a year — and released over 3 million gallons into rivers, farmland, reservoirs, and more. Those 85 spills caused more than \$40 million in property damage.<sup>6</sup>

Not all projects have such a widespread base of support to generate the kind of attention to those risks that the Dakota Access Pipeline protests have, which is why the Board needs to carefully consider the fully array of risks presented by the activities permitted under GLB.

Finally, though some FHCs have recently scaled back their commodity activities, there is no reason why new financial or political forces would not spur them to again engage in such activities, absent a strong rule prohibiting them from doing so.<sup>7</sup>

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<sup>5</sup> Fiona Harvey, "World on Track for 3C of Warming under Current Global Climate Pledges, Warns UN," *The Guardian*, 3 November 2016, <https://www.theguardian.com/environment/2016/nov/03/world-on-track-for-3c-of-warming-under-current-global-climate-pledges-warns-un>.

<sup>6</sup> Center for Biological Diversity, "Analysis: North Dakota Pipelines Average Four Spills Per Year; 3 Million Gallons Spilled in Past 21 Years," 6 December 2016, [http://www.biologicaldiversity.org/news/press\\_releases/2016/dakota-access-pipeline-12-06-2016.html](http://www.biologicaldiversity.org/news/press_releases/2016/dakota-access-pipeline-12-06-2016.html).

<sup>7</sup> See, e.g., Jeffrey Sparshott, "Energy Firms Step Up Business Investment," *Wall Street Journal*, 28 November 2016, <http://www.wsj.com/articles/energy-firms-step-up-business-investment-1480329000>



## Examples of the kinds of problematic holdings of major banks<sup>8</sup>

### Morgan Stanley

Morgan Stanley has executed physical commodity supply contracts, such as contracts to supply jet fuel to airlines—for example, from 2003 to 2013, it was the primary jet fuel supplier for United Airlines.

In 2013, Morgan Stanley reported trading aluminum, copper, gold, lead, palladium, platinum, silver, rhodium, zinc, coal, crude oil, heating oil, ethanol, fuel oil, gasoline, jet kerosene, naphtha, and natural gas. It also reported maintaining physical inventories in 2012 that included 1.7 million barrels of crude oil, 5.8 million barrels of heating oil, and 6.2 million barrels of gasoline.

While Morgan Stanley may be reconsidering some of its holdings and investments, it has expressed no intention to scale back its commodities trading activities – its 2015 annual SEC filing said that it engages in “production, storage, transportation, marketing and execution of transactions in several commodities, including metals, natural gas, electric power, emission credits, and other commodity products,” and still trades “various physical commodities, including crude oil and refined products, natural gas, base and precious metals, and agricultural products.”<sup>9</sup>

### JPMorgan Chase

JPMorgan Chase’s physical commodity activities have included the purchase, sale, transport, and storage of various commodities, including oil products, natural gas products, coal, metals, electricity, and agricultural products. In 2013, JPMorgan Chase reported trading in cocoa, coffee, aluminum, copper, gold, lead, nickel, palladium, platinum, silver, tin, zinc, coal, crude oil, electricity, heating oil, gasoline, jet kerosene, and natural gas. JPMorgan Chase also reported maintaining inventories of many physical commodities as of 2011, including 6.4 million barrels of crude oil, 3.6 million barrels of heating oil, 900,000 barrels of gasoline, 3.4 million barrels of jet kerosene, and 51.9 billion ft<sup>3</sup> of natural gas.

In 2012, JPMorgan Chase began “Project Liberty,” a five-year oil supply agreement with a joint venture between the Carlyle Group and Sunoco to operate one of the largest oil refineries

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<sup>8</sup> Unless otherwise noted, examples come from: US Senate Permanent Subcommittee on Investigations, *Wall Street Bank Involvement With Physical Commodities*, 20 November 2014, <http://www.hsgac.senate.gov/download/report-wall-streetinvolvement-with-physical-commodities>.

<sup>9</sup> Morgan Stanley, Form 10-K for the year ended December 31, 2015, at 19, 146.



in the U.S., including supplying 100% of its crude oil, and purchasing the majority of the refined products as they were produced. JPMorgan Chase then sold around half of the refined products back to Sunoco for retail distribution, and sold the rest to third parties. To carry out the contract, JPMorgan Chase leased or subleased about 14.5 million barrels of storage for crude and refined products.

JPMorgan Chase has said that it is in the process of exiting its physical assets. In 2013, it sold about half its power plants, and in 2014, it began the process of selling a large portion of its physical commodities operations, including its physical oil, gas, power, warehousing facilities, and energy transportation operations. However, it continues to trade commodities, particularly oil, and base and precious metals.<sup>10</sup>

## Deforestation: One of the biggest global climate risks

Large-scale deforestation accounts for about 15% of greenhouse gas emissions globally each year. Such deforestation occurs largely as the result of industries like palm oil production and cattle ranching.<sup>11</sup>

In the Amazon, oil drilling and hydroelectric dams are also significant contributors to deforestation.<sup>12</sup> In just one part of the Brazilian Amazon, nearly 5,000 square miles of area were lost to clear cutting between August 2015 and July 2016, a 29 percent increase over a year earlier (when over 3,850 square miles were lost). That's an area greater than the state of Connecticut.<sup>13</sup>

Yet despite their direct involvement in deforestation, only 30% of manufacturers and retailers that reported on their deforestation risks could pinpoint where their supply chains began, according to a new report by CDP, a UK-based non-governmental organization that promotes

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<sup>10</sup> Neil Hume and David Sheppard, "JP Morgan Oil Trader Takes over Commodities," *Financial Times*, 20 July 2016, <https://www.ft.com/content/794048f0-4e95-11e6-88c5-db83e98a590a>.

<sup>11</sup> Cassie Werber, "Global banks have \$2.8 trillion-worth of power to stop deforestation, and only a handful are using it," *Quartz*, 6 December 2016, <http://qz.com/853098/global-banks-have-2-8-trillion-worth-of-power-to-stop-deforestation-and-only-a-handful-are-using-it/>.

<sup>12</sup> Adam Zuckerman and Kevin Koenig, *From Well To Wheel: The Environmental, Social and Climate Costs of Amazon Crude*, Amazon Watch, September 2016, <http://amazonwatch.org/assets/files/2016-amazon-crude-report.pdf>.  
Christian Poirier, Amazon Watch, *Dams and Deforestation in Brazil*, Forthcoming 2017.

<sup>13</sup> Chris Mooney, "Destruction of the Amazon is speeding up — just when the planet can least afford it," *Washington Post*, 2 December 2016, [https://www.washingtonpost.com/news/energy-environment/wp/2016/12/02/amazon-deforestation-is-increasing-at-a-time-when-the-planet-can-least-afford-it/?utm\\_term=.2d94d192b1b2](https://www.washingtonpost.com/news/energy-environment/wp/2016/12/02/amazon-deforestation-is-increasing-at-a-time-when-the-planet-can-least-afford-it/?utm_term=.2d94d192b1b2).



corporate transparency on climate-related risks. As a result of this ignorance, up to US\$906 billion in revenue is at risk of deforestation.<sup>14</sup>

As Katie McCoy of CDP stated when releasing the report, “Supply chains are like rows of dominoes: if unsustainable commodities enter the top of a supply chain, the effects will cascade throughout. Failing to address deforestation will have knock-on reputational impacts, manifesting themselves as consumer boycotts, community opposition, and increased regulatory scrutiny. Business growth is at risk.”<sup>15</sup>

A related study, by Global Canopy Programme (GCP), studied the 150 finance companies that own the \$2.8 trillion in shares, loans, or bonds of the 250 companies operating in four key supply chains -- cattle, timber, soya and palm oil -- that contribute most heavily to tropical deforestation, and found that only four of those 150 banks have policies to ensure their financing does not fund forest destruction by those four industries.<sup>16</sup> Bank of America, for example, says in a banking policy adopted in 2004 that it will not finance commercial projects that result in the clearing of primary tropical moist forests.<sup>17</sup>

And unfortunately, GCP found that even when financial institutions commit to halt deforestation, they often do not honor those commitments. Even of those financial institutions that promise to monitor compliance by companies they invest in, three-quarters have still made loans to companies that lack the relevant anti-deforestation safeguards.

## Case Studies from the Amazon

### The environmental, climate, and social consequences of oil drilling in the Amazon rainforest

The Amazon rainforest is an unparalleled global treasure. Encompassing an area the size of the continental United States, the world’s largest rainforest spans nine countries and covers 40% of South America. It produces a fifth of the world’s flowing freshwater, draws down a quarter of all carbon absorbed by land, and produces a fifth of the world’s oxygen, driving weather patterns as

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<sup>14</sup> CDP, *Revenue at Risk: Why Addressing Deforestation Is Critical to Business Success*, December 2016, <https://www.cdp.net/en/reports/downloads/1375>.

<sup>15</sup> CDP. “Addressing Deforestation Is Critical to Business Success,” December 2016, <https://www.cdp.net/en/research/global-reports/global-forests-report-2016>.

<sup>16</sup> Global Canopy Program, “Sleeping giants of deforestation: the companies, countries and financial institutions with the power to save forests,” December 2016, [http://forest500.org/sites/default/files/sleeping\\_giants\\_of\\_deforestation\\_-\\_2016\\_forest\\_500\\_results.pdf](http://forest500.org/sites/default/files/sleeping_giants_of_deforestation_-_2016_forest_500_results.pdf).

<sup>17</sup> Bank of America, “Forests Practices Policy,” 2014, [http://www.banktrack.org/download/forests\\_practices\\_policy/forest\\_practices.pdf](http://www.banktrack.org/download/forests_practices_policy/forest_practices.pdf).



it regulates global climate. The Amazon's forests host 30% of global biodiversity and are home to nearly 400 distinct indigenous peoples that depend on its resources for physical and cultural survival.<sup>18</sup>

The opening of new oil drilling concessions constitutes one of the most serious threats to the western region of the Amazonian biome. Existing and proposed oil and gas blocks in the Amazon cover 283,172 square miles, an area larger than the state of Texas. Oil is presently being extracted from only 7% of these blocks, yet national governments aim to exploit an additional 40%.

Included among those are blocks overlapping with pristine, mega-diverse forests such as Ecuador's Yasuní National Park, a UNESCO Biosphere Reserve.<sup>19</sup> Experts consider the park among the most biodiverse places on the planet — just one hectare contains more local species of trees than identified in all of the U.S. and Canada combined,<sup>20</sup> and boasts record levels of insects, birds, and mammals. It is also home to members of the country's last two indigenous peoples living in voluntary isolation. Most of the barrels of crude extracted from this vulnerable region will likely be sold in the U.S.<sup>21</sup>

Drilling in the Amazon rainforest poses a triple threat to the climate. First, deforestation from construction of well sites, pipelines, and access roads, destroys the aboveground rainforest ecosystems that play a vital role in climate stability. Resulting alterations in rain patterns could worsen or create new catastrophic droughts or floods across the Western Hemisphere, setting off a chain reaction that could lead to ecological collapse. Climatologists' have predicted that Amazon deforestation could mean "20 percent less rain for the coastal Northwest and a 50 percent reduction in [California's] Sierra Nevada snowpack" have borne out, with the state now facing its worst drought in 1200 years.<sup>22</sup>

Second, that rainforest destruction degrades the world's largest carbon sink. As leading climate scientist Antonio Nobre has said, "destroying the Amazon... is like shooting yourself in the foot. The Amazon is a gigantic hydrological pump that brings the humidity of the Atlantic Ocean into

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<sup>18</sup> Adam Zuckerman and Kevin Koenig, *From Well To Wheel*, Op. Cit.

<sup>19</sup> Matt Finer et al., "Future of oil and gas development in the western Amazon," *Environ. Res. Lett.* 10 024003, 2015, <http://iopscience.iop.org/article/10.1088/1748-9326/10/2/024003/meta>

<sup>20</sup> Margot S. Bass et al, "Global conservation significance of Ecuador's Yasuní National Par,," *PloS one*, 5.1 (2010): e8767, <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0008767>

<sup>21</sup> Adam Zuckerman and Kevin Koenig, *From Well To Wheel*, Op. Cit.

<sup>22</sup> Morgan Kelly, "If a tree falls in Brazil...? Amazon deforestation could mean droughts for western U.S.," Princeton University, 7 November 2013, <http://www.princeton.edu/main/news/archive/S38/31/66M12/index.xml?section=topstories>.



the continent and guarantees the irrigation of the region.”<sup>23</sup> Lastly, the oil drilled from the Amazon contributes to increased global emissions when burned.

The western Amazon is also the home of hundreds of indigenous peoples who depend upon the rainforest for their survival and way of life. When the rainforest is destroyed from impacts associated with oil drilling, it threatens their health by contaminating their water, soil, air, and takes away their food security. The rainforest is not only important to the continuation of their culture, but to their daily survival.

Oil operations have particularly toxic impacts on the health of indigenous communities. In one oil-producing region of the Peruvian Amazon, 98 percent of children in indigenous communities have high levels of toxic metals in their blood as a direct result of oil extraction waste products in their environment,<sup>24</sup> and the country’s the country’s Environmental Ministry declared four river basins impacted by an oil company’s operations “environmental emergencies.”<sup>25</sup>

In the forests of Ecuador’s Yasuní, the nomadic Tagaeri and Taromenane indigenous nations, which live in voluntary isolation, have found their lands increasingly surrounded by oil operations, spurring predictable and tragic consequences. While the country’s constitution explicitly enshrines indigenous rights, prohibiting extractive activities in their territory by labeling such operations “a crime of ethnocide,” the government’s plans to drill hundreds of oil wells in Yasuní could very well lead to the commission of this very crime.

Ecuador’s government justifies oil drilling in Yasuní by raising the dubious, convenient claim that the Tagaeri-Taromenane have migrated from the region, and with that excuse the government recently signed contracts with China’s Andes Petroleum for oil blocks that overlap this new area of alleged migration. This government shell game imperils the very existence of its last isolated peoples.

Lack of respect of governments for rights creates further risks

The indigenous right to Free, Prior, and Informed Consent (FPIC), as outlined in the International Labor Organization Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, is at the heart of resource conflicts across the Amazon, conflicts which are often particularly intense surrounding oil operations. A rigorous implementation of FPIC implies

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<sup>23</sup> Jan Rocha, “Drought bites as Amazon’s ‘flying rivers’ dry up,” *The Guardian*, 15 September 2014, <https://www.theguardian.com/environment/2014/sep/15/drought-bites-as-amazons-flying-rivers-dry-up>.

<sup>24</sup> Office of the High Commissioner for Human Rights, “Peru / Indigenous peoples: “New oil project threatens further harm for human rights victims” – U.N. experts warn,” United Nations, 15 December 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15421&LangID=E>.

<sup>25</sup> Andrew Miller, “Oil in the Peruvian Amazon: A 2015 Panorama”, Amazon Watch, 6 February 2015, <http://amazonwatch.org/news/2015/0206-oil-in-the-peruvianamazon-a-2015-panorama>.





that consent should be granted freely, prior to project approval, in an informed manner, with the state guaranteeing to transparently conduct this process.

However, such a right is rarely implemented properly. In some cases, local legislation may recognize the right to consultation, but consultation is not the same as the right of indigenous peoples to say no to government-imposed extraction projects. Furthermore, even when states do purport to consult communities, many fail to meet even this low burden, which requires informing local communities of the impact of future operations.

Ecuador is a prime example of failed FPIC processes. Oil concessions are carved up into 200,000-hectare blocks and tendered to the highest bidder long before the indigenous landholders are even notified of the threat. The consultation process doesn't begin until contracts have been signed, investments made, and money has exchanged hands. Current and future oil-driven conflicts stem from this fundamental violation of the indigenous rights to determine the future well-being of their territories and communities.

### Engendering Risk and Corruption

FPIC is not only legally mandatory for those countries that have ratified ILO Convention 169 or have otherwise enshrined it in local legislation, but for many companies it is a critical measure to insure project success, and to justify their incursion into fragile and culturally-sensitive forests to their shareholders. For many major investors, this social license to operate has become increasingly important, with shareholders demanding indigenous rights' policies, explicitly calling for not just consultation, but consent of local communities. For downstream refineries and purchasers, the implications of upstream rights violations, delayed deliveries, shipment schedule slippages, price variations, and an unreliable fuel supply do not present a sustainable business model.

In addition, this high-stakes and high-risk business environment has allowed corruption to thrive. China buys nearly all of Ecuador's oil and then resells it to corrupt Ecuadorian oil insiders, who then sell it on the open market at a markup. Private traders then sell the oil to refineries, with most of it going to California. An investigative report based on the Panama Papers showed that two of those middlemen managed to skim \$1 off the top of every barrel of oil sold, earning a handsome \$70 million "commission." Shell companies and offshore accounts were used to hide the paper trail and the money. These are the same middlemen who received tens of millions in inflated contracts and kickbacks from Petroecuador, a revelation that led to a prison sentence for the company's head and the forced resignation of the country's Hydrocarbons Minister.<sup>26</sup>

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<sup>26</sup> Adam Zuckerman, "Unclean Hands: Corruption Plagues Ecuador's Oil Deals with China," Amazon Watch, 22 June 2016, <http://amazonwatch.org/news/2016/0622-uncleanhands-corruption-plagues-ecuadors-oil-deals-with-china>.



## Continuing Oil Spills in Peruvian Amazon Contaminate Livelihoods and Lead to Transit-Blocking Protests

Since January 2016, ten oil spills have occurred along the PetroPeru oil pipeline in the Peruvian Amazon.<sup>27</sup> All the spills have occurred into or alongside the Marañón River, which originates in the Andes and travels through Northern Peru to the Amazon River, serving along the way as a primary water source and transportation route for much of Northern Peru. The spills have affected dozens of indigenous villages along the river and at least 10,000 people. The pipeline is in disrepair and after the second spill of the year the government ordered the state-owned company to shut it down, yet somehow spills have continued.<sup>28</sup>

An investigative team visited the region in June, after the third spill of the year, and found significant health impacts of the spills and little to no government response. For example, after one of the spills it took health officials a whole month to visit two affected villages. And in these often-poor villages, where many residents are subsistence farmers or fishers, people have had little choice but to eat the fish and crops bathed in oil-contaminated water, or go hungry. In one community, the National Agency for Fisheries Health found cadmium in fish used for human consumption; in other areas, no studies have been conducted.<sup>29</sup>

Furthermore, the contamination that has seeped into the water table will continue to affect crops and fish for years to come. Yet inadequacies in Peruvian health agencies mean that information on the health risks posed by such spills reach local residents slowly, if at all; it took two years for a study on the effects of a massive 2014 spill to be released - not to mention be shared with local communities in their indigenous languages - that showed two-thirds of adults had higher than normal cadmium and the mercury in their urine.<sup>30</sup>

In response to the massive destruction of the spills and an utter lack of adequate response from the government or the company, communities took to the Marañón River to protest, at times blocking transit on the river and impeding both company operations and daily commerce. The

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<sup>27</sup> Barbara Fraser, “New Talks on Oil Pollution Could End Indigenous Blockade of Amazonian River in Peru,” *Mongabay*, 9 November 2016, <https://news.mongabay.com/2016/11/new-talks-on-oil-pollution-could-end-indigenous-blockade-of-amazonian-river-in-peru/>.

<sup>28</sup> Rebecca Wolff, “‘Things Shouldn’t Be Like This’: Lingering Effects of Peru’s Jungle Oil Spills,” *National Geographic Society (Blogs)*, 7 September 2016, <http://voices.nationalgeographic.com/2016/09/07/things-shouldnt-be-like-this-lingering-effects-of-perus-jungle-oil-spills/>.

<sup>29</sup> Kevin Floerke, and Rebecca Wolff, “Health Concerns, Food Insecurity Linger Months after Peruvian Oil Spills,” *Mongabay*, 25 July 2016, <https://news.mongabay.com/2016/07/health-concerns-food-insecurity-linger-months-after-peruvian-oil-spills/>.

<sup>30</sup> Ibid.



non violent mobilization continued for over two months, until early November when high-level government officials finally agreed to meet with protesters. As of this writing, those talks continue.<sup>31</sup>

Though the protesters have primarily demanding clean up, remediation, and prevention measures, their underlying message has also called for a national debate on oil drilling in the Peruvian Amazon. The protesters also call for a review of the contract with Argentinian-based Pluspetrol, which continues to operate the oil field known as Block 8. When Pluspetrol's lease expired in 2015 in a different nearby block, the company pulled out without remediating polluted sites. Communities located in Block 8 therefore fear the company will do the same when its lease there expires.<sup>32</sup>

## Conclusion: In Light of the Social & Environmental Risks, the Board Must Prohibit FHCs from Engaging in Commodities Activities

As described above, commodities financing and ownership - whether through section 4(k) complementary or merchant banking authority or 4(o) grandfathered authority - poses extreme risks to society and financial institutions beyond the catastrophic risks already recognized by bank executives.<sup>33</sup> Direct involvement in extractive industries has significant implications for human rights, health, and international law. Financing and producing fossil fuels, as well as other commodities like palm oil and beef, has significant implications for our environment, which also results in a host of threats to the wellbeing of communities, businesses, and our planet, ultimately posing "significant risks to the prosperity and growth of the global economy," as affirmed by in a September 2015 statement by a number of US banks, including JPMorgan Chase and Morgan Stanley.<sup>34</sup> As a result, these activities create layer upon layer of legal liability, as well as political, reputational, and financial risks for large financial institutions.

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<sup>31</sup> Barbara Fraser, "New Talks on Oil Pollution Could End Indigenous Blockade of Amazonian River in Peru," *Mongabay*, 9 November 2016,

<https://news.mongabay.com/2016/11/new-talks-on-oil-pollution-could-end-indigenous-blockade-of-amazonian-river-in-peru/>.

<sup>32</sup> Barbara Fraser, "Another Pipeline Spill Reported in Peruvian Amazon as Indigenous Protests Enter Eighth Week," *Mongabay*, 25 October 2016,

<https://news.mongabay.com/2016/10/another-pipeline-spill-reported-in-peruvian-amazonian-as-indigenous-protests-enter-eighth-week/>.

<sup>33</sup> See Christian Berthelsen & Justin Baer, "Morgan Stanley Scales Down Commodities," *Wall Street Journal*, December 18, 2013. ("At a staff meeting in Budapest this fall, Morgan Stanley Chief Executive James Gorman told employees that a hypothetical oil spill by a tanker under the company's control is 'a risk we just can't take,' according to people familiar with the remark."), <http://www.wsj.com/articles/SB10001424052702304173704579264452411520552>.

<sup>34</sup> Bank of America et al, "In Support of Prosperity and Growth: Financial Sector Statement on Climate Change," 25 September 2015, <https://www.ceres.org/files/bank-statement-on-climate-policy>.



Financial institutions themselves have recognized the risks to their institutions and to society from these activities, and have even adopted policies to address such risks.<sup>35</sup> It is time for the Board to do the same, and to prevent FHCs from engaging in the range of commodities activities under GLB.

Sincerely,



Leila Salazar-López  
Executive Director

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<sup>35</sup> See, e.g.: [http://about.bankofamerica.com/assets/pdf/COAL\\_POLICY.pdf](http://about.bankofamerica.com/assets/pdf/COAL_POLICY.pdf);  
[http://www.banktrack.org/download/forests\\_practices\\_policy/forest\\_practices.pdf](http://www.banktrack.org/download/forests_practices_policy/forest_practices.pdf);  
<https://www.credit-suisse.com/media/assets/corporate/docs/about-us/responsibility/banking/policy-summaries-en.pdf>.

