American Bankers Association
Building Success. Together.

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BY ELECTRONIC MAIL

January 31, 2014

Office of the Comptroller of the Currency
400 7th Street, S.W., Suite 3E-218
Mail Stop 9W-11
Washington, D.C. 20219
Attention: Legislative and Regulatory Activities Division
Docket ID OCC-2013-0016
RIN 1557 AD 74

Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551
Attention: Robert de V. Frierson, Secretary
Docket No. R-1466
RIN 7100-AE03

Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Attention: Robert E. Feldman, Executive Secretary
RIN 3064-AE04

Re: Proposed Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring, 78 *Federal Register* 71818, November 29, 2013
Treatment of Corporate Trust Deposits

Ladies and Gentlemen:

The American Bankers Association (ABA),[1] on behalf of its Corporate Trust Committee, is responding to the above proposal by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (collectively, the agencies). Members of ABA's Corporate Trust Committee provide more than ninety percent of corporate trust services in the U.S.

As discussed more fully below, corporate trust is a service business in which institutional customers' funds are placed in the hands of a select group of banks with the reputation and capability of servicing and managing large and oftentimes complex engagements for those customers. Customers seek out these banks and establish operational relationships governed by elaborate, detailed agreements outlining the duties of the corporate trust bank. Because the corporate trust business depends on the ability to

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at www.aba.com. ABA's Corporate Trust Committee focuses on the role of banks in providing corporate trust services both in the U.S. and abroad. The Corporate Trust Committee currently is comprised of representatives of eleven major banking institutions

provide sophisticated services for complex matters and to manage large amounts of data, institutional customers carefully select corporate trust banks before the engagement, and they almost never change providers after the engagement begins. With relationships on matters as diverse as payments to pension fund annuitants or holders of oil and gas royalties, corporate trust engagements can and do continue for decades. In addition, outflows from corporate trust deposits are strictly limited by contractual terms, and funds awaiting disbursement generally remain with the corporate trust bank. ABA believes that corporate trust contracts and relationships by their nature are, in effect, effectively perpetual engagements, little responsive to short term-stress and inextricably link the bank and its institutional customer.

ABA and its Corporate Trust Committee believe that corporate trust deposits are squarely within the operational services prong of the definition of "operational deposit" in the proposal.[2] However, some elements of the operational requirements are inapposite to such deposits. Specifically, we are concerned with the application to corporate trust deposits of the "excess funds" requirement and the treatment of collateralized corporate trust deposits. Accordingly, while we appreciate that it would be difficult for the agencies to address each type of deposit on a bank's balance sheet to specific types of operational requirements, we seek to ensure that (1) deposits generated from corporate trust services are properly classified as operational deposits under the proposal and receive a flat 25 percent runoff factor; and (2) collateralized deposits are exempted from the proposal entirely or, at the very least, are exempt from the unwind methodology.[3]

BACKGROUND

1. Characteristics of Corporate Trust Services

Corporate trust is a specialized service performed by only a limited number of banks and is not widely understood outside the corporate trust industry itself. The corporate trust department of a bank is engaged by an institutional customer, such as a corporation,[4] financial institution, or governmental entity[5] to provide a particular type of trustee or agency service in connection with the issuance of publicly sold or privately placed debt, or in connection with a variety of other types of corporate, commercial, securities-related or litigation-related transactions involving a financing, security or escrow arrangement.

A corporate trust department of a bank is administered as a specialized trust department (separate and distinct from the bank's commercial and retail banking functions and separate from its traditional personal trust services). Unlike a traditional trustee, the trustee and agency engagements undertaken by a corporate trust department are nondiscretionary in nature and are governed by detailed administrative agreements and highly personalized performance requirements to which the bank is required to adhere.

As such, the trust, escrow or agency accounts established and held within a corporate trust department are restricted in their use and application (including with respect to rights of withdrawal and investment) by the terms of the legally binding indenture, trust, or agency agreement (governing agreements). The governing agreements are tailored to the customers' needs and the performance standards of the corporate trust bank in meeting those needs. As a result, any discretionary interruption of service or renegotiation with another corporate trust bank becomes a costly and perhaps risky occurrence.

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[2] Under the proposal, to qualify as an operational deposit, the deposit must be generated from certain operational services and meet other operating requirements.

[3] The ABA Corporate Trust Committee supports the separate letter filed by ABA to highlight key industry concerns with the proposal. In addition, the Committee supports the recommendations of the letter ABA submitted jointly with The Clearing House Association L.L.C., the Securities Industry & Financial Markets Association, the Financial Services Roundtable, the Institute of International Bankers and the Structured Finance Industry Group , which provides detailed technical comments on all aspects of the proposal.

[4] The reference here to "corporation" is meant to include any type of business entity, regardless of legal form.

[5] The reference here to "governmental entity" includes state and legal agencies and authorities.

The highly specialized nature of the services provided and the dependency of customers on the banks providing these services is evident from a brief overview of the various accounts held by corporate trust banks.

2. Types of Accounts and Capacities Held

Corporate and Municipal Bonds **-** When engaged in a corporate bond or municipal bond transaction, in addition to serving as indenture trustee, the corporate trustee will typically act as paying agent for the bonds and as depositary bank to hold in trust any related transaction accounts or funds, such as sinking funds, construction funds, reserve funds, and tax rebate funds. The administration of these accounts often must meet the requirements of complicated maturity or redemption schedules, sometimes for multiple series of bonds, and often involves investment restrictions that must be met for the issuer to comply with applicable tax requirements.

Structured Finance and Securitization **-** When acting as trustee in structured finance and securitization transactions, in addition to providing other services, the corporate trustee will typically act as custodian of the pooled or pledged property (cash-flow assets) or collateral making up the assets of the trust estate. It will receive collections and proceeds from these assets periodically and deposit the cash receipts into trust accounts for the benefit of the trust estate. It will carry out distribution on designated payment dates in accordance with the specifically defined cash allocation provisions of the governing documents. Cash flow allocation requirements, recordkeeping, and related fund administration analytics associated with these accounts are often complex, and must be administered within restrictive time frames.

Escrow, Custodian, and Paying Agent Transactions **-** When acting as escrow agent in an engagement involving a deposit of cash in escrow, or when acting as custodian, collateral agent, paying agent, or fiscal agent, the corporate trust bank will hold deposited funds in an escrow or other agency account, as applicable, within its corporate trust department, for the benefit of the parties to the governing agreement. Those funds are held until the stated conditions or requirements permitting release are met, as set forth in the escrow agreement.

In each of these cases, these accounts are held in trust or as agent, on behalf of others, and are administered strictly in accordance with the provisions of the governing agreement, without discretion as to their use or application on the part of the trustee or agent and without availability for withdrawal by the underlying customer or transaction parties, in each case except in accordance with the terms of the governing agreement.

3. Corporate Trust Deposits are Extremely Stable

Funds in corporate trust deposit accounts are extremely stable and are not generally impacted by short-term severe economic distress for the following reasons.

- First, because of the specialized nature of indenture trustee and agency engagements carried out in accordance with carefully drafted, complex documents, the withdrawal, payment, disbursement, and investment of funds in such accounts are strictly limited. Therefore any temporary outflows may be made only in accordance with the governing documents and, thus, are extremely limited.
- Second, the complex operational requirements of such accounts generally lead to retention of deposits in the corporate trust bank.
- Third, the longevity of corporate trust engagements mitigates against withdrawal of funds from corporate trust accounts.

a. Outright withdrawals and disbursements are restricted.

Withdrawals from corporate trust accounts for outright payment or disbursement are permitted only in accordance with the terms and applicable requirements of the governing agreement. Accordingly, outright withdrawals by the account customer or account beneficiary on a discretionary basis are not permitted.

Trust indentures. In the case of indenture trustee engagements for bonds, notes and other debt securities, outright disbursements generally are made in accordance with the terms of the governing indenture or trust agreement only as follows:

- On scheduled payment dates for the payment of scheduled principal and interest on the bonds or other debt securities when due and payable;
- At final maturity;
- Upon redemption in the case of securities subject to redemption prior to maturity;
- In the event of acceleration prior to maturity upon the occurrence of an event of default; or
- From reserve funds and other accounts held under indentures or trust agreements.

Agency accounts. Likewise, in the case of escrow or other agency accounts, outright disbursement is permitted only when and as permitted or required by the applicable terms of the governing escrow or agency agreement. These are not accounts from which outright withdrawals can be made by the account customer or account beneficiary on a discretionary basis.

Accordingly, corporate trust accounts held uninvested in cash are not subject to run-off resulting from the occurrence of severe economic or financial shocks in the marketplace, for the reason that such funds may not be withdrawn at the discretion of customers, but rather may be disbursed, paid out, or otherwise applied only by the trustee or agent (as applicable) in accordance with legally binding terms set forth in the governing document.

b. Corporate trust funds that are invested generally remain in the corporate trust bank.

Except for certain circumstances in which they may be held uninvested,[6] funds held in corporate trust accounts are generally invested on a directed basis pursuant to investment instruction from the customer or another authorized transaction party. However, it is important to understand that the governing agreement typically restricts the selection of investments, limiting the directing party to a specified list or schedule of "permitted" or "eligible" investment choices.

Corporate trust banks typically design internal investment products to comply with investment eligibility and liquidity requirements (Balance Sheet Investment Products) for their customers to ensure the highest retention in the bank of funds while invested. Unless the governing document requires investment in a prescribed third-party investment facility,[7] it is common for the party directing the investment to select one or more of the corporate trust bank's Balance Sheet Investment Products. Because of the limited differences in yield between internal and external investments, retention in the corporate trust banks of corporate trust deposits is often viewed as operationally preferable.

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[6] With respect to uninvested funds held by national banks in fiduciary accounts, any amount in excess of federal deposit insurance must be fully collateralized. Certain state-chartered banks may be subject to similar collateralization requirements under applicable state law or by regulation.

[7] Investments outside the corporate trust bank include pre-arranged guaranteed investment contracts or forward purchase agreements with third-party providers, or investment in State and Local Government Series (SLGS) securities, in the case of tax exempt bonds.

In this regard, it is useful to understand the qualities and dynamics that drive corporate trust customer relationships. Because of applicable cost structures, corporate trust engagements are typically large transactions involving multi-million dollar, or sometimes multi-billion dollar, financings. The administrative and operational requirements of the corporate trustee's performance, including administration of associated trust and agency accounts, are often detailed and complex, requiring compliance with strict timeframes, and sometimes including responsibility for detailed investor reporting and data analytics. Investment selection by corporate trust customers is conservative and, as explained above, works within a range of very limited investment options, and is confined by associated operational needs and concerns.

To be sure, temporary outflows of funds for the purpose of investment may occur when funds on deposit in a corporate trust account are directed to be invested in assets outside the corporate trust bank, or when funds on investment in one or more of the corporate trust bank's Balance Sheet Investment Products are directed to be moved into another investment product. However, temporary outflows of funds from movement of investment away from the corporate trust bank's Balance Sheet Investment Products are not likely to occur as a result of severe economic or financial stress, for several reasons.

- First, the number of eligible investment alternatives under the governing document is usually quite limited.

- Second, because eligibility is limited to products carrying little or no risk of principal loss while still meeting applicable liquidity requirements (in order to be available when needed for payment under the applicable indenture, trust, or agency agreement, sometimes on a daily basis), there is often very little difference in yield between the corporate trust bank's Balance Sheet Investment Products and eligible external products.

- Third, because of the nature of the underlying transactions, often involving complicated cash movement within tight time frames, operational concerns outweigh concerns over modest differences in yield.

These elements combine to create an established operational relationship with the corporate trust bank on which the customer has a substantive dependency. As a result, funds on deposit in these corporate trust accounts can be expected to stay at these institutions notwithstanding the occurrence of severe financial or economic stress in the marketplace.

For these reasons, corporate trust customers are service-sensitive and not yield-sensitive in the management of corporate trust account investments, meaning that the funds largely remain in the corporate trust bank. Although corporate trust accounts may be subject to temporary outflow from investment in investment products or vehicles outside the corporate trust bank, such outflows do not tend to occur in response to or as a result of acute economic or financial stress.

c. Relationship Longevity

Corporate trust activities evolve and continue over long periods, and develop into successful corporate trust relationships through performance of service. As noted above, corporate trust activities are typically long-term engagements, generally lasting for the life of a publicly sold or privately placed debt security, usually a corporate bond, municipal bond, asset-backed or mortgage-backed security, other type of structured finance or leveraged finance security, or related corporate or commercial transaction. Administration is systems-driven, involving cash allocation, investment tracking, investor-reporting, related transfer agency services, and other associated complexities of account administration, all of which provide great customer disincentive to change an engagement once established.

In addition, governing documents will typically contain technical restrictions and requirements that must be complied with in order for a change or replacement of the corporate trustee take place. For these reasons – cost, complexity, and administrative burden – the sophisticated customers who use corporate trust services are not inclined to, and in large part do not, make frequent changes of their corporate trust relationships, as compared to other types of banking relationships.

d. Inflow Information

During times of severe economic or financial stress in the marketplace, other investment providers or alternative vehicles may become ineligible or unavailable, resulting in a "flight to quality" into the corporate trust bank's Balance Sheet Investment Products. Indeed, ABA believes that most corporate trustee banks experienced an *increase* in their corporate trust deposits during the recent financial crisis.[8]

As indicated above, the corporate trust relationship can be complex, requiring highly developed systems in order to calculate and provide for payments to scores, or in some instances thousands or tens of thousands, of payees on a timely and accurate basis. For these reasons, issuers and other entities who select trustees select them very carefully, using a hierarchy of selection factors that rely very little, if at all, on the rates or structure of funding products and rely very much on experience, past relationships, historical performance, accuracy, quality of service, and ability to handle large complex transactions. In effect, the corporate trust customer base tends not to be highly yield or external-event sensitive; rather, because of the size, scope, and risk of the underlying transaction, their concerns are more appropriately focused on, and sensitive to, quality and stability of service, over a long-term period.

Thus, a stress scenario should not materially change the calculus of a corporate trust account unless a bank's servicing capability also declines. In our experience, it is doubtful that any of the factors that would be considered in an acute stress scenario would change the behavior of corporate trust customers and promote run-off.

TREATMENT OF CORPORATE TRUST DEPOSITS UNDER THE PROP0SAL

1. Excess or "Surge" Balances

As proposed, banks must develop methodologies to ensure that operational deposits include only those funds needed to facilitate customers' operational service needs. Amounts in excess of such needs – "surge" balances – must be considered non-operational. As stated above, corporate trust deposit accounts are based on relationships and technical and operational capabilities. As such, they simply do not offer incentives to customers to maintain excess funds. Rather, clients deposit only those funds that are necessary or required pursuant to the governing agreements for the operational services being provided.

Accordingly, ABA and its Corporate Trust Committee strongly recommend that balances arising from corporate trust services be exempt from the "excess" operational methodology. As demonstrated above, corporate trust accounts are limited by the operative documents as to what funds such accounts can hold, and "excess" amounts are sometimes expressly prohibited from being deposited in such accounts. Also, because the typical permitted or eligible investment language does not allow for high returns on the amounts in such accounts, customers have no incentive to keep "excess" funds in such accounts. Therefore, we believe it clear that corporate trust deposits should quality for a flat runoff factor of 25 percent.

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[8] Based on data compiled from members of ABA's Corporate Trust Committee, their aggregate year-end corporate trust deposits increased from 2007 to 2008 by approximately 6 percent or $4.1 billion; and from 2008 to 2009 by approximately 13 percent or $12 billion. Indeed, during the turmoil in 2008, the majority of the Committee experienced an increase in corporate trust deposits.

2. Collateralized Corporate Trust Deposits

Corporate trust deposits are often collateralized for two reasons. First, when such deposits remain in the corporate trust bank (self deposits), federal and/or state regulations may require that they be collateralized in an amount in excess of federal deposit insurance.[9] Similarly, state laws typically require that deposits of municipal (public) funds be collateralized in amounts in excess of federal deposit insurance. In both cases, the collateral takes the form of a pledge of securities held by the bank. In the event of a bank default, such collateralized deposits are deemed to be secured claims. In other words, the deposit account owner in these situations would receive either the collateral securities or the market value thereof. As a result of the collateral, these deposit account owners would have little or no reason to withdraw funds in a time of severe stress. Rather, they are as secure as if their accounts were fully covered by FDIC deposit insurance. As discussed more fully in the ABA Letter and the Joint Trades Letter, because of these attributes we strongly urge the agencies to exempt collateralized deposits from the proposal.

In addition, under the proposal collateralized corporate trust deposits are treated as "secured funding transactions" and as such are subject to the proposal's "unwind methodology." This methodology adjusts the amount of High Quality Liquid Assets (HQLA) (§_.21(f)) to ensure banks do not artificially inflate their HQLA amounts via certain repurchase and reverse repurchase transactions. ABA and its Corporate Trust Committee strongly believe that corporate trust deposits cannot be used to inflate the ratio because collateralized corporate trust deposits do not provide short-term funding of securities on a bank's balance sheet. Thus, should the agencies nonetheless determine to treat collateralized deposits as covered by the proposal, we seek clarification that collateralized corporate trust deposits are not subject to the unwind methodology.

Moreover, we are concerned that collateralized corporate trust deposits are subject to certain runoff factors based on the HQLA category of the collateral. These runoff factors, in some cases, result in a significantly higher runoff factor for a secured corporate trust deposit than if the deposit was unsecured. For example, assume that a corporate trust operational deposit would receive a 25 percent runoff factor. If that same deposit was collateralized by level 1 or 2 HQLA, it would receive a 0 percent or 15 percent runoff factor respectively. However, if the deposit was collateralized by level 2B collateral, it would receive a 50 percent runoff factor. ABA and its Corporate Trust Committee strong believe that the runoff factor should be based on the nature of the deposit, *not* the nature of the underlying collateral.

For the reasons set forth above, we strongly recommend that collateralized corporate trust deposits be exempt from the proposal or, at the very least, be exempt from the "unwind methodology." Moreover, due to the nature of the deposit and safety afforded by the collateral, a runoff factor should be applied which is lower than 25 percent.

CONCLUSION

As demonstrated above, corporate trust relationships are complex, requiring highly developed systems to calculate and provide for payments to scores, or in some instances thousands or tens of thousands, of payees on a timely and accurate basis. For these reasons, issuers and other entities who select trustees select them very carefully, using a hierarchy of selection factors that rely very little, if at all, on the rates or structure of funding products and rely very much on experience, past relationships, historical performance, accuracy, quality of service, and ability to handle large complex transactions.

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[9] Regulations that apply to national banks exercising trust powers provide that "[A] national bank may deposit funds of a fiduciary account that are awaiting investment or distribution in the commercial, savings or another department of the bank unless prohibited by law. To the extent these funds are not [FDIC insured], the bank shall set aside collateral as security, under the control of appropriate fiduciary officer and employees in accordance with [the regulations.]" *See,* 12 CFR § 9.10(b).

In effect, the corporate trust customer base tends not to be highly yield sensitive or external-event sensitive; rather, because of the size, scope, and risk of the underlying transaction, their concerns are more appropriately focused on, and sensitive to, quality and stability of service, over a long-term period and should qualify as operational deposits. As a result, corporate trust deposits are extremely stable. ABA and its Corporate Trust Committee strongly believe that deposits generated from corporate trust services are properly classified as operational deposits under the proposal and should receive a flat 25 percent runoff factor. In addition, we believe that collateralized deposits should be entirely exempt from the proposal or, at the very least, be exempt from the unwind methodology.

We would be pleased to discuss further any of the points in this letter. Please feel free to contact the undersigned or Alison Touhey (atouhey@aba.com).

Sincerely,

Cristeena G. Naser

Cristeena G Naser