TD

January 31, 2014

Via Electronic Mail

Robert de V. Frierson, Secretary
Board of Governors of the Federal Reserve System
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Docket No. R-1466
RIN 7100 AE-03

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
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Docket ID OCC-2013-0016
RIN 1557 AD 74

Re: ***Notice of Proposed Rulemaking—Liquidity Coverage Ratio: Liquidity Risk Management, Standards, and Monitoring***

Ladies and Gentlemen:

TD Bank US Holding Company ("TD") greatly appreciates this opportunity to provide comments to the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of the Comptroller of the Currency ("OCC") (collectively "the Agencies") on certain aspects of the joint inter-agency notice of proposed rulemaking (the "Proposal")[1] regarding a quantitative liquidity requirement based on the Liquidity Coverage Ratio standard ("LCR") established by the Basel Committee on Bank Supervision ("BCBS").

TD is the indirectly wholly-owned U.S. bank holding company ("BHC") subsidiary of The Toronto-Dominion Bank. The Toronto-Dominion Bank is a chartered bank subject to the provisions of the *Bank Act* (Canada) and is the second largest banking organization in Canada with total consolidated assets of approximately C$863 billion, as of October 31, 2013. Its U.S. intermediate

[1] Liquidity Coverage Ratio: Liquidity Risk Management, Standards and Monitoring, 78 Fed. Reg. 71,818 (November 29, 2013)

holding company, TD, headquartered in Cherry Hill, New Jersey, is the 12th largest BHC in the United States, with total consolidated assets of $232 billion held primarily through its two US subsidiary insured depository institutions: TD Bank NA and TD Bank USA, National Association, ("TD Bank NA", "TD Bank USA" and collectively "the Banks").

Given the importance of prudent liquidity risk management to the financial sector and the dangers of liquidity shortfalls in a market stress event, we strongly support the fundamental objectives of the Basel III Liquidity Framework and the Proposal, which include promoting the resilience of the liquidity risk profile of internationally active banking organizations, improving the banking sector's ability to absorb shocks arising from financial and economic stress, and improving the measurement and management of liquidity risk. We view the LCR's quantitative framework as a useful complement to banking organizations' own liquidity stress testing and qualitative liquidity risk management rules and guidance.

However, TD believes that certain changes to the Proposal are necessary to accurately reflect the liquidity risk of certain depositor types and to appropriately align requirements with the liquidity risk profiles of a large U.S. regional banking organization such as TD, with minimal reliance on wholesale funding and a business model with low complexity. As discussed in further detail in the subsequent sections, our main recommendations to the Agencies are:

1. Appropriately capturing the liquidity risk characteristics of sweep deposit arrangements by (i) recognizing the relationship of the sweep counterparty on the basis of its "affiliation" to the depository rather than requiring GAAP "consolidation" and (ii) adjusting outflow rates to properly reflect observed behavior of sweep deposits both in normal and stressed conditions.

2. Appropriately capturing the underlying nature of collateralized public deposits by (i) exempting these deposits from the unwind provisions of the "adjusted" HQLA calculation and (ii) adjusting outflow rates in line with observed behaviors.

3. Recognizing the benefit of partial deposit insurance coverage in deposit outflow rates.

4. Adjusting the calculation methodology of the "worst day" net cash outflow amount so that deposit outflow requirements for demand and retail deposits are not treated as withdrawn on the first day of the period.

5. Allowing a Covered Bank to include Parent Bank home jurisdiction Level 1 High Quality Liquid Assets (HQLA) in calculation of its HQLA.

6. Deferring the daily calculation requirement for at least 12 months to allow those banks who are not currently subject to daily liquidity reporting submissions to complete the infrastructure builds that will be required.

7. Ensuring a "level playing field" for the entities covered by the Proposal by reconsidering the qualification requirements of the Modified LCR approach.

We have participated in the development of a joint comment letter submitted by The Clearing House Association L.L.C., the American Bankers Association, the Securities Industry and Financial Markets Association, the Financial Services Roundtable, the Institute of International Bankers and the Structured Finance Industry Group (the "Joint Trade Associations") as well as a comment letter submitted by a group of regional banking organizations (the "Regional Bank Group"). We support the comments and concerns raised by both the Joint Trade Associations and the Regional Bank Group and this letter is intended to supplement the comments contained in those letters.

We would also welcome the opportunity for a follow-up meeting in person to discuss our concerns in greater qualitative and quantitative detail, particularly with regard to our experience with sweep deposits given our long-standing and material relationship with TD Ameritrade.

Part I of this letter provides further detail on recommendations related to deposit assumptions noted in items 1-4 above while Part II addresses the operational and scope items noted in items 5-7.

Part I – Deposit Assumptions

1. Sweep deposit outflow assumptions:

(a) To the extent that outflow rates for sweep deposits are dependent on the relationship between a Covered Bank and the sweep counterparty, this relationship should be based on "affiliation" rather than "consolidation".

TD agrees with the notion implicit in the Proposal that in order for a lower outflow assumption to apply to a sweep deposit arrangement, an established relationship between the parties adds to the stability not only between the contracting parties but to the depositors who are the beneficiaries of the relationship as well.

In speaking of reciprocal brokered deposit account arrangements, the preamble to the Proposal notes that they "have been observed to be more stable than typical brokered deposits because each institution within the deposit placement network typically has an established relationship with the retail customer *or counterparty"* in the transaction[2] (emphasis added) and applies a 10 percent outflow rate to them. In the context of sweep deposits, however, this "established relationship" is held to a higher standing without explanation. For while it is noted that "the proposed rule would assign brokered sweep deposits progressively higher outflow rates depending on deposit insurance coverage *and the affiliation of the broker sweeping the deposits"*[3] (emphasis added), as written, a broker would have to be controlled by or under common control with the covered company in order for a 10 percent outflow rate to be applied to those deposits. It would appear that any other type of association between the parties, even a relationship that amounts to the parties deemed to being affiliates for BHCA purposes, would result in the imposition of an outflow rate that is several times higher. There is no explanation in the Proposal for this distinction and TD strongly believes that where differentiation in sweep deposit outflow rates is based on a relationship with the sweeping counterparty, that this relationship should be based on affiliation as defined under existing U.S. banking law.

The concept of affiliation is well recognized in U.S. banking law. Federal Reserve Act Sections 23 A and B as well as Regulation W set out restrictions and limitations, both singly and in the

[2] Id.
[3] Id.

aggregate, on loans and extensions of credit, asset purchases, the provision of services and many other types of arrangements between insured depository institutions and those entities that are controlled by or under common control with the depository. These affiliate transactions must also be on market terms that do not disadvantage the insured depository institution. These restrictions cover the sweeping of deposits between depository institutions and an affiliate, ensuring that pricing is on market terms and that withdrawal and deposit considerations are well documented and defined. In the case of TD, the legal agreement with our affiliate, TD Ameritrade Inc ("TD Ameritrade"), is structured with these requirements fully in mind.

The Banks maintain significant affiliate sweep deposits pursuant to an Insured Deposit Account Agreement with TD Ameritrade. The Banks and TD Ameritrade share a common marketing brand and TD provides banking services to Ameritrade brokerage customers that include checking, ACH and debit card capabilities. The Banks and Ameritrade are affiliated entities for BHCA purposes due primarily to a sizeable equity investment by TD in Ameritrade however Ameritrade is not a TD consolidated entity under US GAAP. We view our affiliate relationship, along with a robust agreement covering the sweep deposit relationship, as a key contributor to the underlying stability of the sweep deposits.

(b) Outflow rates for sweep deposits should be adjusted to accurately capture the underlying depositor risk and deposit experience.

As noted above, the Banks have a significant affiliate sweep program in place with TD Ameritrade. Our detailed, ongoing analysis of these deposits demonstrates that the large majority of these balances exhibit balance permanence characteristics associated with stable or "core" retail or small business deposits. However, certain segments, such as large investment advisor influenced balances demonstrate relatively higher run-off experience, as would be expected. Our experience overall has been one of low balance volatility, consistent with money market accounts gathered through retail branches.

Affiliated sweep deposits do not share characteristics typically viewed as indicators of higher liquidity risk.

Specifically:

- Affiliate sweep deposits arise out of a client "operational" relationship. The swept funds are only one aspect of a broader client relationship which includes not only brokerage services but other banking activities. Sweep deposits are not separately promoted and are ancillary to the core strategy of a brokerage such as Ameritrade, which is focused on offering securities brokerage products and services to investors and advisers.

- Sweep deposits are not gathered through high interest rates being paid. The interest rate paid is typically a nominal level that is not sensitive to market rates.

- The average sweep deposit balance at the customer level is relatively small and represents a stable proportion of total client assets under management on a per client basis over time. Additionally, the vast majority of swept funds are FDIC insured. At the portfolio level, a large number of small balance accounts in combination with the high level of deposit insurance, leads to a high level of stability, as noted in both the Basel guidance and the Proposal.

Adding to the stability is a long-term agreement between the Banks and Ameritrade which clearly lays out termination and withdrawal rights. The agreement does not contain trigger events out of the control of the Banks or termination provisions which would result in accelerated return of deposits.

Our analysis demonstrates that there are two key indicators of balance stability in sweep deposits – (i) level of deposit insurance and (ii) the nature of the depositor – retail or investment adviser. We note that these key indicators are consistent with key liquidity characteristics for all deposits.

Our sweep deposit stability analysis, which covers a six-year period between Jan/2008 and Nov/2013 and incorporates both market and idiosyncratic events, supports the following outflow factors for affiliate sweep deposits:

- All balances covered by deposit insurance should be assigned an outflow rate no higher than 10%;

- Uninsured balances from a retail depositor / client should be assigned an outflow rate no higher than 20%; and

- Uninsured balances from an account managed by an advisor should be assigned and outflow rate no higher than 40%.

Additionally, we believe it should be a requirement that the agreement between an entity and the affiliate counterparty have clear withdrawal and termination rights that minimize the risk of the possibility of accelerated, non-client driven withdrawal of funds.

As noted earlier, we welcome the opportunity to continue the dialogue and share our sweep deposit experience and analysis with you as we feel that TD is well placed to provide insight in this area.

2. Collateralized Public Deposits[4]

The Proposal appropriately recognizes that client deposits are considered to be among the most stable sources of funding. Accordingly, client deposits are treated more favorably than other types of bank funding particularly where the depositor has other relationships with the depository institution. The exception to this general proposition is the Proposal's treatment of collateralized Public Sector deposits. Under the Proposal, state and municipal deposits, that by state law are required to be collateralized, are not treated as deposits but rather as secured funding transactions. As a result, the Proposal focuses not on the nature of the relationship between the parties but rather on the presumed liquidity of the collateral securing the deposit. This mischaracterization has negative consequences which we believe were not intended by the Agencies. Public deposits typically represent a long term, operational banking relationship betwen a Covered Bank and public sector entities. For example, TD Bank Government Banking customers have an average tenure with the bank of over 14 years.

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[4] For purposes of this letter, Public Deposits are defined as deposits from state, municipal and other public sector entities that must, by law, be collateralized.

(i) **Collateralized Public Deposits should be exempt from the unwind provisions of the "adjusted" HQLA calculation**

In order to prevent the manipulation of High Quality Liquid Asset ("HQLA") calculations via secured borrowing transactions (whereby a level 2 asset is used to raise funding, the proceeds of which are held in Level 1 assets), the Proposal requires that Covered Banks complete an "adjusted HQLA" that unwinds HQLA secured funding transactions. We support the Proposal's aim to prevent the manipulation of available HQLA. However, as the Proposal is written, it would effectively treat Collateralized Public Deposits as secured borrowing transactions. In our view, this is not appropriate. In contrast to short-term securities financing transactions, Public Deposits typically represent a long-term, operational banking relationship between a Covered Bank and public sector entities. The nature of the deposit relationship does not give rise to the same manipulation concerns as those expressed in the Proposal that justifies the adjusted HQLA calculation. Indeed, it would be very difficult for a Covered Bank to use Public Deposits to engage in the HQLA manipulation that the adjusted calculation is meant to guard against. As such, we recommend that collateralized Public Deposits be exempted from the unwind calculation.

(ii) **Outflow rates for Public Deposits not secured by HQLA should be adjusted to reflect the true nature of both the deposit and the collateral provided.**

For purposes of balance sheet efficiency, many Public Deposits are secured by Federal Home Loan Bank ("FHLB") letters of credit. This reduces the amount of available securities required by a Covered Bank, allowing the Bank to utilize its real-estate secured loan portfolio as collateral. At the same time, the Public Deposit counterparty still receives the benefit of high quality collateral. For purposes of the Proposal, these deposits appear to be treated as "unsecured wholesale funding" and are assigned the resultant 25% or 40% outflow rate, depending on whether the deposits meets the required criteria of an "operational" deposit.

In our view, these outflow rates do not accurately capture the behavior of Public Deposits, even in times of stress, and do not recognize the value of the high quality collateral supporting the Public Deposit. Given the strict qualifications in place for the type of collateral required to support Public Deposits (generally US GSE or equivalent credit quality) in the eyes of the public depositor, the collateral serves the same function as deposit insurance. We recommend that outflow rates be calibrated to reflect this. Specifically:

- Collateralized Public deposits meeting "operational deposit" criteria as established by the Agencies be accorded no more than a 5% outflow rate.

- Collateralized Public Deposits not meeting the "operational deposit" criteria be accorded a 20% outflow rate.

3. Deposit outflow rates should reflect the benefit of partial deposit insurance

Appropriately, the Proposal establishes different outflow rates depending on deposit insurance coverage, a primary contributor to deposit stability. However, the Proposal divides deposits into "entirely covered by deposit insurance" and "not entirely covered" and does not recognize the benefit of partial deposit insurance. While we agree with the concept in the Proposal that partially insured deposits should carry a higher outflow rate than a fully insured deposit, we feel strongly that there should be some recognition of the lower risk of the portion of the balance that is covered by insurance.

We would propose that Covered Banks be allowed to recognize the lower risk of partial deposit insurance by being permitted to bifurcate partially insured deposits into a fully insured portion and an uninsured portion and apply outflow rates accordingly. We would also note this is consistent with the Basel framework, which allows for the recognition of the insured and uninsured portion of deposits separately.

4. The calculation of "worst day" liquidity coverage should be adjusted to reflect the true risk of retail and operational deposits.

We understand and appreciate the rationale in the Proposal to address potential maturity mismatches by using a "worst day" approach to calculate net cash outflows for purposes of the LCR calculation. However, if this methodology is adopted, it becomes extremely important that the calculation of inflows and outflows within the 30-day window be as accurate as possible given the direct impact on the level of liquidity a Covered Bank must hold. We agree with the concerns related to the "worst day" calculation raised in the Joint Trades Letter but would like to take the opportunity to re-emphasize the treatment of demand and retail deposits.

A technical interpretation of the Proposal as written appears to require that all outflows related to demand and retail deposits should be treated as occurring entirely on day one of the 30-day period. The LCR outflow rates are calibrated to estimate potential outflows over a 30-day stress test. By assuming the entire outflow occurs on the first day of the period materially overstates and "front loads" the liquidity requirement in the early part of the 30-day window. This distortion will have an outsized impact on those banks, like TD, that are funded by the deposit types recognized by the Proposal as lower risk (retail and other demand) relative to non-relationship, short-term wholesale funding.

To address this distortion, we would propose that outflows for retail and demand deposits be calibrated to ensure a more even distribution over the 30-day timeframe.

5. Definitions of deposit types should be either clarified or adjusted in two areas.

To ensure an accurate capture of the underlying liquidity risk of the depositor, the definition of "financial institutions" for purposes of deposit classification needs to be clear and limited to financial institutions that could contribute to risk of inter-connectedness. For example, the NAICS code 52 "Finance and Insurance" is a very broad definition including 816,000 businesses, and even the narrower NAICS code 522110 "Commercial Banking" has over 79,000 businesses. In addition, depending on the definition, certain Financial Institutions may have operational needs and transactional deposits not dissimilar to a non-financial institution.

The definition of Small Business Banking as $1.5MM and under should be reconsidered as $5MM is more in line with the emerging definition across the industry. The $1.5MM size cap for consideration is more in line with the historical $5MM in sales definition for Small Business and is low relative to the definition trend towards $10MM - $20MM in sales.

Part II – Other Recommendations

1. **Allow a Covered Bank to include Parent Bank home jurisdiction Level 1 High Quality Liquid Assets (HQLA) in calculation of its HQLA.**

As a general principle, we believe a lack of international consistency across jurisdictions has the potential to negatively impact market liquidity and impact competition across firms. In addition to related concerns raised in the Joint Trades and Regional Banking comment letters, we feel it is important that, to the greatest extent possible, Level 1 HQLA asset types should be harmonized across all Basel jurisdictions to ensure international consistency. In our view, national discretion has a place in the definition and asset inclusion in Level 2 assets. However, given the extremely high requirements for an asset to meet Level 1 status, there should be minimal differences across jurisdictions.

If harmonization of Level 1 HQLA is not possible, at the very least we strongly recommend that where the home jurisdiction of the Foreign Parent of a Covered Bank has included a particular asset type in its Level 1 stock definition and the Covered Bank can fully demonstrate an ability to sell or pledge the asset in the jurisdiction, that this asset be included in the Covered Bank stock of Level 1 HQLA. Given the Parent of the Covered Bank is a market participant in the jurisdiction and the strong market support of the asset given its explicit definition as Level 1 HQLA, liquidity concerns are minimized.

2. **Defer the daily calculation requirement for at least 12 months to allow those banks who are not currently subject to daily liquidity reporting submissions to complete the infrastructure builds that will be required.**

The requirement to calculate the ratio on a daily basis is burdensome for many organizations, including TD, especially in light of the accelerated implementation time frame the Agencies have proposed. Unlike the larger and more complex banking organizations that are currently subject to the Federal Reserve's detailed daily liquidity reporting requirements, calculating the ratio on a daily-basis requires extensive systems that most large regional banks do not currently have in place. Developing those systems is challenging, expensive, and time consuming. The burden associated with implementing and testing systems capable of the daily calculation is magnified by the accelerated implementation time line. The Federal Reserve clearly recognizes the disparate liquidity calculation and reporting capabilities of bank holding companies as evidenced by the distinction between the scope of reporting obligations between globally systemically important banks (daily) and bank holding companies with total consolidated assets of at least $50 billion (monthly) in connection with its proposed FR 2052a and FR2052b liquidity reporting requirements[5].

If the Agencies feel that the requirement to calculate the ratio on a daily basis is necessary to achieve the important goals underlying the proposed quantitative liquidity requirements, we respectfully request that banking organizations that presently are not subject by the Federal Reserve to daily liquidity reporting requirements be given sufficient additional time after the Agencies adopt final rules to build and test the systems needed to support the daily calculation.

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[5] Proposed Agency Information Collection Activities; Comment Request, 78 Fed. Reg. 57,634 (Sep. 19, 2013).

The Proposal clearly recognizes that introducing systems to collect and process the data needed to calculate the ratio on a daily basis comes at a significant burden. Accordingly, we believe that delaying the implementation of the daily calculation requirement until January 1st, 2016 would appropriately reflect the disparate liquidity calculation and reporting capabilities among bank holding companies subject to the Proposal.

2. **Ensure a "level playing field" by reconsidering the qualification requirements of the Modified LCR approach.**

The Proposal states that the full LCR is intended to apply to internationally active banking organizations whose failure would have significant systemic impact. However, the Agencies have proposed to apply the Full LCR to any banking organization with $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposure, as well as the subsidiary depository institutions of such organizations with total assets greater than $10 billion. This threshold inappropriately captures several large regional banking organizations (including TD) even though the business models, operations and funding profiles of these large regional banks are more similar to the organizations that would be subject to the modified LCR, than to the organizations (such as the G-SIBs) sought to be covered by the full LCR.

One specific potential adverse consequence of this "unlevel" playing field is with regard to deposit pricing. The absence of any liquidity requirement for certain banks (those under the $50 billion threshold) and lower requirements for others has the potential to create a perverse incentive for these banks to use price inflation to attract savings and money market deposits. In a liquidity event, price sensitive deposits such as these will be the first to leave making a liquidity shortfall worse for these banks and introducing additional liquidity risk into the financial system.

The Federal Reserve's modified LCR proposal specifically recognizes that the Modified LCR is appropriate for organizations that:

- Are less complex in structure, less reliant on riskier forms of market funding, and have simpler balance sheets;
- Have liquidity risks that are easier for management and supervisors to monitor and address quickly in a stressed scenario; and
- Would likely not have as great a systemic impact as larger, more complex companies should they experience liquidity stress.[6]

Large regional banks meet each of these criteria and, thus, are more appropriately covered by the Modified LCR. As noted in detail in the Regional Bank Comment letter, the balance sheet, funding profile and international activities of the Covered Regional Banks (regional banks subject to the full, not modified LCR) are very different from the balance sheet, funding profile and international activities of the G-SIBs. On the other hand, the same data demonstrates that the balance sheet, funding profile and international activities of Covered Regional Banks is very similar to that of the banking organizations that would be subject to the Modified LCR.

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[6] *Proposal*, at 71,846.

To repeat just a few of these metrics:

- The average ratio of Total Trading Assets to Total Assets of the G-SIBs is 16%, but less than 1% for both Covered Regional Banks and all modified LCR Banking Organizations;

- The average reliance on wholesale funding ratio (as calculated under the methodology used by the OCC as part of its Canary supervisory system) for the G-SIBs is 46%. The same average ratio is only 23% for Covered Regional Banks and 24% for all modified LCR Organizations;

- The average ratio of Core Deposits to Total Assets for the G-SIBs is only 29%, while the same average ratio is 70% for Covered Regional Banks and 62% for all Modified LCR Banking Organizations; and

We believe that the data clearly demonstrates that it would be more appropriate—both from a regulatory and a competitive equality standpoint—for all regional banks, including the Covered Regional Banks, to be subject to the modified LCR.

As noted above, the Federal Reserve already has recognized that regional banking organizations have simpler and less complex liquidity profiles than the G-SIBs. For example, only G-SIBs are subject to the current daily 4G liquidity reporting framework, and only G-SIBs would be subject to the Federal Reserve's proposed FR 2052a daily complex institution liquidity report.[7] We believe this same definition should be used for purposes of determining the scope of the Full LCR and the modified LCR. Under this approach, the full LCR would apply to U.S. banking organizations that have been designated as G-SIBs,[8] and other less complex banking organizations, including Covered Regional Banks, would be subject to the modified LCR.

We believe modifying the full LCR in this manner is consistent with safety and soundness considerations, the Basel LCR Framework, and the direction provided by Congress in Section 165 of the Dodd-Frank Act.[9] In this regard, Covered Regional Banks would continue to be subject to the same quantitative liquidity risk management requirements (i.e., the Modified LCR) that apply to other comparable regional banking organizations. In addition, Covered Regional Banks would continue to be subject the Federal Reserve's enhanced liquidity standards established under section 165 of the Dodd-Frank Act,[10] and the Agencies' liquidity risk

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[7] In addition to the differences in reporting frequency between the FR 2052a (daily for G-SIBs) and the FR 2052b (monthly for bank holding companies with $50 billion or more in total consolidated assets that are not G-SIBs), the FR 2052b report also would require more limited and streamlined information than the FR 2052a.

[8] This scope would also be consistent with the scope of the Agencies' proposed enhanced supplementary leverage ratio, which would apply only to G-SIBs as a result of the $700 billion total consolidated asset or $10 trillion in assets under custody thresholds. *Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions*, 78 Fed. Reg. 51,101 (Aug. 20, 2013).

[9] Section 165(a)(2) provides for any enhanced prudential standards to be tailored based on a firm's riskiness, complexity, size and financial activities, as well as other relevant risk-related factors. 12 U.S.C. § 5365(a)(2).

[10] *See Enhanced Prudential Standards Proposal supra* note **Error! Bookmark not defined.**.

management expectations set forth in the Interagency Policy Statement on Funding and Liquidity Risk Management.[11]

Thank you very much for the opportunity to provide our comments regarding the Agencies' Proposal. Please feel free to contact me directly at 856-470-2225 (or via email at scott.ferguson@td.com) if you have any questions or comments.

Very truly yours,

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[11] 75 Fed. Reg. 13,656 (Mar. 22, 2010).