October 21, 2013

Via Electronic Mail

Robert de V. Frierson, Secretary
Board of Governors of the Federal Reserve System
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Docket No. R-1460

Robert E. Feldman, Executive Secretary
Attention: Comments
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RIN 3064-AE01

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Docket ID OCC-2013-0008

Re: Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and their Subsidiary Insured Depository Institutions

Ladies and Gentlemen:

We appreciate the opportunity to respond to the proposed rule, issued by the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (collectively, the "Agencies") regarding an enhanced supplementary leverage ratio for U.S. bank holding companies ("BHCs") with at least $700 billion in total consolidated assets or at least $10 trillion in assets under custody, and any insured depository institution subsidiary of these BHCs (the "Proposal").[1]

Each of the undersigned institutions is a BHC with total consolidated assets of between $60 billion and $310 billion, as of June 30, 2013. Our institutions are traditional banking organizations, focused on domestic business activities, whose sizes are modest in relation

[1] *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). As proposed, the enhanced supplementary leverage ratio would be, in effect, 5% for covered BHCs and 6% for insured depository institutions of such BHCs. The current supplementary leverage ratio established by the agencies for BHCs subject to the advanced approaches rules is 3%.

to both the U.S. banking sector and U.S. economic activity. For example, each of the undersigned, as of June 30, 2013, had national deposit shares under 3% and total consolidated assets that represented less than 2% of U.S. GDP, and in the aggregate, had less assets than the single largest U.S.-based globally systemically important bank ("G-SIB") identified by the Financial Stability Board.

We agree that the financial system and banking organizations must be well capitalized, and believe that an appropriately calibrated and well-constructed leverage ratio is a necessary part of a robust regulatory capital framework. Should other capital requirements, including risk-based measures, prove faulty or inadequate, an appropriate leverage ratio serves as a useful backstop, helping to ensure that banking organizations still possess sufficient capital to operate in a safe and sound manner and, hence, support the overall stability of the financial system.

Substantial progress has been made since the financial crisis to strengthen banking organizations and make them more resilient to withstand stress. The package of regulatory reforms now in place requires significantly higher capital levels, in terms of both quality and quantity. Additionally, annual capital planning and rigorous stress testing requirements now provide large banking organizations and regulators with forward-looking assessments of capital adequacy under a range of—including very severe—economic scenarios and help ensure that organizations have sufficient capital resources to withstand potential losses and still remain viable financial intermediaries. These capital-related reforms have resulted directly in significantly strengthened bank capital positions.[2] Finally, the enhanced prudential standards and early remediation provisions proposed for both U.S. bank holding companies with total consolidated assets of $50 billion or more and those foreign banking organizations doing business in the United States will provide the Agencies, when finalized, with additional tools to monitor and assess the activities of those institutions and provide for early remediation measures to be taken to address stress situations, as warranted.

A leverage ratio is, by its very nature, a blunt tool, and a miscalibrated leverage ratio could lead to unintended consequences that undercut the progress made in strengthening the financial system. An enhanced supplementary leverage ratio has the potential to alter the interaction between the risk-based capital rules and the leverage ratio, with the leverage ratio potentially becoming the binding capital constraint rather than serving its traditional role as a backstop to the risk-based rules. If a leverage requirement were to become the binding requirement it would potentially create incentives for organizations to hold higher-yielding, higher-risk assets, which likely would lead to a distortion of how the market prices these higher risk assets. Therefore, even institutions that are not subject to the enhanced leverage ratio requirement would feel the impact of changes to asset

[2] "Over the past four years, the aggregate tier 1 common equity ratio of the 18 firms that underwent the [2013 Comprehensive Capital Analysis and Review process] has more than doubled, from 5.6 percent of risk-weighted assets at the end of 2008 to 11.3 percent at the end of 2012." Chairman Ben S. Bernanke, *Stress Testing Banks: What Have We Learned?* (Apr. 8, 2013), *available at* http://www.federalreserve.gov/newsevents/speech/bernanke20130408a.htm.

pricing. A binding leverage ratio also would penalize banking organizations for holding risk-free or very low risk assets, such as cash and government securities. As a result, there would be a disincentive to hold more than the required minimum amount of high-quality liquid assets under the Liquidity Coverage Ratio ("LCR"). A generally binding leverage ratio, therefore, could work at cross purposes with the goal underlying the LCR.

With that context in mind, we offer the following specific comments on the Proposal.

A. If the Agencies determine that imposing an enhanced leverage ratio is appropriate to mitigate systemic risk, the scope should not extend to banks that do not pose systemic risk upon failure.

The Proposal invites comment on whether the scope of the proposed enhanced supplementary leverage ratio should be expanded to banking organizations currently subject to the advanced approaches risk-based capital rules,[3] but which are not currently designated as G-SIBs. As an initial matter, it is not clear that an enhanced supplementary leverage ratio is necessary or appropriate for any organization. Nevertheless, for the reasons outlined below, if the agencies determine to move forward with the Proposal, we do not believe that the scope should be extended beyond the Proposal.

In the Proposal, the Agencies propose to revise U.S. regulatory capital rules to further increase the supplementary leverage standard for the "largest, most interconnected U.S. BHCs (that have been, and are likely to continue to be identified as G-SIBs)." The Agencies' stated rationale for implementing a leverage ratio for these organizations that is substantially higher than the 3% supplementary leverage ratio under the recently finalized U.S. regulatory capital framework is that a "perception continues to persist in the markets that some companies remain 'too big to fail,' posing an ongoing threat to financial stability." This perception, the Agencies suggest, weakens market discipline and results in "competitive distortions because companies perceived as 'too big to fail' often can fund themselves at a lower cost than other companies." Therefore, the Agencies conclude that an enhanced leverage standard is appropriate for "those U.S. banking organizations that pose the greatest potential risk to financial stability."

We believe that substantial steps have been taken toward addressing the problem of whether certain institutions are "too big to fail."[4] Nonetheless, if the Agencies determine

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[3] *Risk-Based Capital Standards: Advanced Capital Adequacy Framework – Basel II*, 72 Fed. Reg. 69,288 (Dec. 7, 2007).

[4] As noted above, Basel III and other capital-related reforms already have resulted in a substantial increase in common equity—the strongest form of capital—at U.S. banking organizations. Additional reforms also have been implemented under the Dodd-Frank Wall Street Reform and Consumer Protection Act to mitigate potential threats to financial stability—including, among other things, the requirement that large BHCs maintain credible plans for their orderly resolution and the new orderly liquidation authority that allows systemically-important financial companies to be resolved in an orderly manner without putting the taxpayer at risk. These represent substantial steps toward addressing the "too big to fail" problem by ensuring that all institutions are resolvable.

that imposing an enhanced supplementary leverage ratio is necessary to address potential perceptions that certain organizations are "too big to fail," it should not be extended to banking organizations the failure of which would not present systemic risk. In this regard, it is clear that there is no perception that regional banking organizations, including any of the undersigned, which focus on traditional banking, are "too big to fail."[5] As such, we believe the Proposal's stated purpose and rationale do not apply to any of the regional banking organizations.

For this same reason, the Proposal should not be expanded to banking organizations currently subject to the advanced approaches risk-based capital rules, but which are not currently designated as G-SIBs. The thresholds for required adoption of advanced approaches risk-based capital rules are based solely on size or foreign exposure, i.e., $250 billion or more in total assets or $10 billion or more in total on-balance sheet foreign exposure.[6] These thresholds, which were first suggested in 2003 and thereafter proposed in 2006, capture institutions whose failure would not present systemic risk. We believe extending application of an enhanced supplementary leverage ratio designed to mitigate threats to financial stability to banking organizations the failure of which would not present systemic risk would be unwarranted.

In line with the stated intent, we do not believe that tying application of any enhanced leverage ratio to a rigid threshold based solely on size will ensure appropriate application. When considering the burden versus the benefits of such a stringent leverage ratio, it is critical that such a requirement be accurately calibrated and applied to achieve the purpose of the requirement (both presently and in the future), and size alone is not a reliable indicator of the degree of risk to financial stability.[7]

The Agencies state that the proposed size-based threshold of at least $700 billion in total consolidated assets or $10 trillion in assets under custody is adequate because each of the U.S.-based institutions that meet the definition of a G-SIB currently satisfies at least one of these two thresholds.[8] Although the Proposal indicates that the Agencies will "evaluate the proposed applicability thresholds and may consider revising them to ensure

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[5] For example, no regional banks (including the undersigned) are among the banking organizations identified by Moody's Investors Service as having received a ratings "uplift" because of their potential systemic importance. *See* Moody's Investors Service, *Reassessing Support in U.S. Bank Ratings – An Update and FAQs* (Mar. 27, 2013), *see also* Standard & Poor's Financial Services LLC, *Standard & Poor's Factors Evolving Nature of Government Support into Its Outlooks on Eight U.S. Bank Holding Companies* (June 11, 2013). Moody's, moreover, has indicated that it is reconsidering its "uplift" assumptions to reflect the impact of resolution policies in the United States. Moody's Investors Service, *Moody's reviews U.S. bank holding company ratings to consider reduced government support* (Aug. 22, 2013).

[6] *Risk-Based Capital Guidelines; Implementation of the New Basel Capital Accord*, 68 Fed. Reg. 45,900 (Aug. 4, 2003) (advanced notice of proposed rulemaking).

[7] *See* 78 Fed. Reg. at 51,103 ("The BCBS framework incorporates five broad characteristics of a banking organization that the agencies consider to be good proxies for, and correlated with, systemic importance—size, complexity, interconnectedness, lack of substitutes, and cross-border activity.").

[8] *See* 78 Fed. Reg. at 51,104.

they remain appropriate," we believe it would be more desirable for the Agencies to directly link the proposed enhanced supplementary leverage ratio to whether or not, based on an institution's complexity, interconnectedness, lack of substitutes, and cross-border activity, when considered individually and in conjunction with the institution's overall size, the institution's failure might present substantial systemic risk. These were the criteria the Financial Stability Board applied to designate institutions as G-SIBs, or banks whose distress or disorderly failure would cause significant disruption to the wider financial system and economic activity,[9] and also are similar to the criteria used by the Financial Stability Oversight Council for assessing whether a non-bank financial company may pose a threat to financial stability.[10] Setting an asset threshold that captures a subset of organizations today undoubtedly will result in unintended outcomes in the future. While the $700 billion in total consolidated assets and $10 trillion in assets under custody criteria may, today, only capture institutions designated as G-SIBs, there is no assurance or reason to believe that such will be the case in the future.

B. We urge the Agencies to review the state of the U.S. regulatory capital framework to consider whether the application of certain aspects of the framework based primarily on simple measures, such as asset size, should be altered to better achieve their objectives.

In the Proposal, the Agencies also have asked broader questions relating to whether certain aspects of the regulatory capital framework could be simplified or otherwise could be better-aligned with overall capital policy objectives. Specifically, the Agencies asked whether they should consider "simplifying or eliminating portions of the advanced approaches rule if they are unnecessary or duplicative."[11] We believe that the Agencies should review the thresholds for mandatory application of the advanced approaches risk-based capital rules and consider whether, in light of recently implemented reforms to the regulatory capital framework, the criteria remain appropriate or whether they should be refined given the purpose of those rules.

Mandatory application of the advanced approaches rules is based on an outdated size-based threshold (i.e., total consolidated assets of at least $250 billion) or total on-balance sheet foreign exposure (i.e., $10 billion or more). However, the stated purpose of the advanced approaches rules was to "focus[] on only the largest and most internationally active banks," distinguishing between such banks and non-advanced approaches banks

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[9] *See* Basel Committee on Banking Supervision, *Global systemically important banks: assessment methodology and the additional loss absorbency requirement* (Nov. 2011); Financial Stability Board, *Update of group of global systemically important banks* (Nov. 1, 2012).

[10] *See* 21 C.F.R. Part 1310.

[11] Question 12 asks: "In light of the proposed enhanced leverage requirement and ongoing standardized risk-based capital floors, should the agencies consider, in some future regulatory action, simplifying or eliminating portions of the advanced approaches rule if they are unnecessary or duplicative? Are there opportunities to simplify the standardized risk-based capital framework that would be consistent with safety and soundness or other policy objectives?"

based on "size and complexity."[12] At the time the asset threshold was first contemplated, more than ten years ago, the Board stated that these thresholds were intended to capture "large, complex, internationally active banking organizations.[13]

In the present Proposal, the Agencies recognize the importance of reevaluating rudimentary size-based thresholds, where factors other than size are intended to be addressed.[14] However, we are not aware of any reevaluation of the advanced approaches criteria having been conducted, even though more refined methods of evaluating complexity and international interconnectedness are now available. Moreover, since the time the rules were proposed, the banking industry has undergone fundamental changes. For example, only five bank holding companies were captured by the $250 billion threshold when the applicable notice of proposed rulemaking was first issued (the smallest at $492 billion), and each of these had substantial foreign operations. Today, the largest regional banking institutions, which slightly exceed the $250 billion threshold, do not have international profiles similar to those institutions first identified in 2006.

As noted above, the Financial Stability Board has developed an internationally agreed-upon framework for identifying banks whose distress or disorderly failure would cause significant disruption to the wider financial system and economic activity. This framework captures such factors as level of complexity, risk profile, scope of operations, and international activity, as well as size. Thus, we urge the Agencies to consider whether these broader criteria would, in light of the purposes of the advanced approaches rules, be more appropriate for determining the scope of required application for those rules. Fixed asset thresholds embedded in rules tend over time to capture organizations that do not exhibit the characteristics that the rules were intended to cover. We believe such is the case with the thresholds initially established for the advanced approaches.

We believe such a review is particularly appropriate given the costs associated with implementation (and supervisory review) of advanced approaches systems, as well as additional prudential measures that today are applied to all institutions that have $50 billion or more in total consolidated assets, and annual capital planning and stress testing requirements, which provide both institutions and regulators forward-looking assessments of capital adequacy.

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[12] *Risk-Based Capital Standards: Advanced Capital Adequacy Framework*, 71 Fed. Reg. 55,830, 55,841 (Sept. 25, 2006).

[13] *Capital Standards for Banks: The Evolving Basel Accord*, 89 Fed. Res. Bull. 395, 400 (2003). As noted below, the profile of the smallest institutions exceeding the $250 billion asset threshold today is very different than the institutions that exceeded that threshold when the Basel II advanced approaches rule was proposed in the United States.

[14] 78 Fed. Reg. at 51,104 ("Over time, as the G-SIB risk-based capital framework is implemented in the United States or revised by the BCBS, the agencies may consider modifying the scope of application of the proposed leverage requirements. In addition, independent of the G-SIB capital framework implementation, the agencies will continue to evaluate the proposed applicability thresholds and may consider revising them.").

We recognize that certain risk management principles in the advanced approaches rules may continue to have value for banking organizations that, following recalibration of the scope of application, may no longer be subject to the advanced approaches. However, the Agencies could combine recalibration of the thresholds for applying the advanced approaches rules with additional risk guidance that conveys the useful risk management principles reflected in those rules in a more cost-effective manner, and perhaps retains specific desirable elements without the overarching burden they otherwise impose. Such an approach could encourage broader application of those risk management principles and also would be more cost-effective for banking organizations that may benefit from those principles but that do not warrant application of the advanced approaches.

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The undersigned thank the Agencies for the opportunity to comment on the Proposal and respectfully ask for consideration of the recommendations and suggestions in this letter. If you have any questions regarding the content of this letter or would like more information on the same, please do not hesitate to contact any of the individuals listed in *Attachment 1* appended hereto.

Sincerely,

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TD Bank US Holding Company
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Attachment 1

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