March 20, 2014

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, DC 20429
comments@FDIC.gov

Re: Notice; Request for Comments—Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy (FR Docket No. 2013-30057)

Ladies and Gentlemen:

Our institutions[1] appreciate the opportunity to comment on *The Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy*, published by the Federal Deposit Insurance Corporation (the "FDIC") in the Federal Register on December 18, 2013 (the "Notice").[2] We commend the FDIC on its efforts to work with the public and other stakeholders to develop a credible and effective strategy to implement the Orderly Liquidation Authority ("OLA") established under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") to resolve a "systemically important financial institution"[3] when bankruptcy would have serious adverse effects on U.S. financial stability. The Notice provides important details about how the FDIC would execute a "single-point-of-entry" ("SPOE") strategy to resolve a U.S. globally systemically important financial institution. As financial market participants, we urge the FDIC to continue to provide the public with details about how such any such strategy would be implemented.

We wanted to submit this letter focusing on several importance aspects of the Notice.

1 The undersigned institutions are regional banking organizations with total consolidated assets of between $70 billion and $330 billion, as of December 31, 2013. Our institutions are traditional banking organizations, focused on domestic business activities, whose sizes are modest in relation to both the U.S. banking sector and U.S. economic activity. For example, each of the undersigned, as of December 31, 2013, had a share of national deposits under 3%, total consolidated assets, as of that same date, that represented less than 3% of U.S. GDP, and in the aggregate, had fewer assets than the single largest U.S. globally systemically important bank ("G-SIB") identified by the Financial Stability Board (the "FSB"). *See* Financial Stability Board, *2013 Update of Group of Global Systemically Important Banks (G-SIBs)* (Nov. 11, 2013), *available at* http://www.financialstabilityboard.org/publications/r_131111.pdf (updating the FSB's list of G-SIBs using year-end 2012 data and the Basel Committee on Banking Supervision's updated methodology published in July 2013).

2 Federal Deposit Insurance Corporation, *Notice; Request for Comments—Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy*, 78 Fed. Reg. 76,614 (Dec. 18, 2013).

3 References in this letter to "systemically important financial institutions" refer to institutions the failure and resolution under otherwise applicable law of which would have serious adverse effects on financial stability in the United States, such that resolution under Title II would be appropriate.

I. The FDIC should define "systemically important financial institutions" for purposes of the SPOE strategy to exclude institutions that are not likely to be resolved under Title II.

The Notice provides useful clarifications as to how an SPOE resolution would be executed, but does not clarify the scope of institutions properly subject to such framework. We urge the FDIC to state clearly the scope of institutions properly subject to a framework for implementing Title II through an SPOE strategy. The use of the term "systemically important financial institution" in the Notice, without definition or clarification, to describe how an SPOE strategy would be carried out, including potential *ex ante* prudential requirements that may apply to such an institution, may cause unnecessary confusion. The SPOE strategy was developed primarily as a means to resolve U.S. globally systemically important banks ("G-SIBs").[4] It was not designed for domestic depository institution holding companies, including regional banking organizations, whose assets are predominantly attributable to one or more insured depository institution subsidiaries, that have limited broker-dealer or other non-bank operations, that do not have significant cross-border operations, and that do not rely to a significant degree on short-term wholesale funding.

Although the FDIC indicates that the Notice was developed with U.S. G-SIBs in mind, we would ask that the FDIC define the term "systemically important financial institutions" for these purposes as those institutions whose failure and resolution under otherwise applicable law would have serious adverse effects on U.S. financial stability, such that resolution under Title II would be appropriate. Doing so would be consistent with the scope of Title II and would not limit in any way the FDIC's authority under the Dodd-Frank Act but would provide clarity to the public as the FDIC continues to develop its Title II framework.[5]

II. *Ex ante* prudential requirements to support an SPOE strategy must not apply to regional banking organizations and other institutions that are unlikely to require Title II resolution.

Consistent with our comments in Part I of this letter, we believe it is equally important that any *ex ante* prudential requirements to support a Title II resolution that might be proposed by a federal banking agency should extend only to those institutions that are likely candidates for a Title II resolution should they fail, principally the G-SIBs, and should not extend to regional banking organizations and other institutions that are unlikely to be resolved under Title II. Every regional banking organization, although varying in size, is capable of being resolved in an orderly manner under the U.S. Bankruptcy Code and the Federal Deposit Insurance Act (the "FDIA") through a range of resolution strategies, without the need to utilize the OLA under Title II. We believe each of our resolution plans demonstrate this fact.[6] As such, the logical and

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4 *See* 78 Fed. Reg. at 76,615.

5 *See* Dodd-Frank Act § 203.

6 We recognize that resolution planning is an iterative process, and the resolution plans that our institutions expect to file in 2014 will incorporate further regulatory requirements and further regulatory guidance.

presumptive resolution regime for regional banking organizations should be the U.S. Bankruptcy Code and the FDIA, not Title II.

Regional banking organizations do not present the factors and complexities that an SPOE resolution strategy is designed to address. Specifically, SPOE is designed to accomplish the following goals, which are not implicated in the context of resolving a regional banking organization under the U.S. Bankruptcy Code and the FDIA:

First, the FDIC has indicated that an SPOE strategy is designed to allow for orderly restructuring of large, complex institutions so that the resulting entity(ies) does not present systemic risk. In other words, it is expected that the resulting entity(ies) following resolution will be "smaller and less complex," and thus resolvable under the U.S. Bankruptcy Code and the FDIA going forward.[7] We believe our resolution plans clearly demonstrate the relative simplicity of regional banking organizations as smaller, less complex banking institutions as compared to G-SIBs. All regional banking organizations in our group are members of the "Third Round" of filers and submitted resolution plans for their holding companies (and banks where required) by December 31, 2013. Larger and more complex institutions filed their first resolution plans in 2012 and earlier in 2013.

Second, SPOE would (i) maintain significant nonbank operations of a systemically important financial institution where failure of those operations would pose a threat to financial stability and (ii) solve for the risk that multiple, competing insolvencies would raise risk of discontinuity of critical operations and uncertain outcomes. Regional banking organizations do not have nonbank operations the failure of which would pose a threat to financial stability and virtually all of the assets of regional banking organizations are held within their consolidated depository institutions, so these concerns are not present. For example, consolidated depository institution assets represent, on average, approximately **97%** of the total consolidated assets for regional banking organizations.[8] In contrast, the consolidated depository institution assets for the four largest U.S. G-SIBs[9] represent, on average, approximately **77%** of total consolidated assets. Broker-dealer assets represent, on average, less than **1%** of total assets for regional banking organizations and, on average, approximately **19%** for all U.S. G-SIBs.

Third, SPOE would maintain significant foreign operations in resolution, thereby limiting concerns with respect to how host jurisdictions may treat the foreign operations of failed organizations and fostering cross-border cooperation. Regional banking organizations do not

7 78 Fed. Reg. at 76,620.

8 Regional banking organizations included for purposes of the data in this Part II are U.S. Bancorp, Capital One Financial Corporation, The PNC Financial Services Group, Inc., BB&T Corporation, SunTrust Banks, Inc., Fifth Third Bancorp, Regions Financial Corporation, KeyCorp, M&T Bank Corporation, Comerica Incorporated, Huntington Bancshares Incorporated, TD Bank US Holding Company, BBVA Compass Bancshares, Inc., and RBS Citizens Financial Group, Inc. Data for bank versus nonbank assets is as of December 31, 2012. All other data is as of September 31, 2013. See the footnotes in *Attachment 2* for additional information about the data in this Part II.

9 This group includes JPMorgan Chase & Co., Bank of America Corporation, Citigroup Inc., and Wells Fargo & Company.

have significant foreign operations, and, therefore, do not raise concerns that the actions of host jurisdictions could present material challenges to the resolution of a regional bank. For example, foreign deposits represent, on average, approximately **1%** of total deposits for regional banking organizations, as compared to approximately **28%**, on average, for all U.S. G-SIBs. Similarly, foreign loans represent, on average, less than **1%** of total loans for all regional banking organizations, as compared to approximately **18%**, on average, for all U.S. G-SIBs.

Fourth, SPOE is designed to ensure sufficient liquidity to maintain operations in resolution, solving for liquidity difficulties that might arise based on the funding profile of the failed institution, including reliance on short-term borrowings. Regional banking organizations rely primarily on core sources of funding, principally deposits, and do not rely to a significant degree on short-term wholesale funding or other short-term sources of market funding. For example, core deposits, as a percentage of total assets, are, on average, approximately **72%** for regional banking organizations, as compared to approximately **29%** for all U.S. G-SIBs; reverse repurchase agreements, as a percentage of total assets, are, on average, less than **1%** for regional banking organizations, as compared to **15%**, on average, for all U.S. G-SIBs; and securities sold or subject to repurchase, as a percentage of total liabilities, are, on average, approximately **1%** for regional banking organizations, as compared to approximately **11%**, on average, for all U.S. G-SIBs. As noted above, the vast majority of regional banking organizations' operations are maintained in one or more insured depository institution subsidiaries and regional banking organizations have only limited broker-dealer and other non-bank operations. Thus, to the extent short-term liquidity may be necessary to facilitate the resolution of a regional bank, the Deposit Insurance Fund could provide such liquidity (either through advances or in the form of guarantees) in the same way that the Deposit Insurance Fund is available to provide liquidity in the traditional bank resolution process.[10]

Fifth, SPOE would prevent disorderly termination of derivatives contracts for institutions with substantial levels of derivatives exposures. Strikingly, the notional value of derivatives contracts for regional banking organizations, as a percentage of total assets and on average, is approximately only **54%**, as compared to approximately **2,549%**, on average, for all U.S. G-SIBs. Moreover, since virtually all of the derivatives activity of regional banking organizations is conducted within an insured depository institution, the FDIA already gives the FDIC the authority to prevent the disorderly termination of the derivative activities of regional banks, without the need for any invocation of Title II.

Sixth, initiating a Title II resolution requires as a condition precedent that the Secretary of the Treasury, in consultation with the President, determine that, among other things, the failure of the financial company and its resolution under otherwise applicable federal or state law would have serious adverse effects on U.S. financial stability.[11] It would be highly unlikely that the

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[10] Resolution plans scheduled to be submitted in 2014 will incorporate additional economic scenarios and will demonstrate that regional banking institutions, of a range of sizes, continue to be resolvable under the FDIA and the U.S. Bankruptcy Code through a variety of resolution strategies.

[11] *See* Dodd-Frank Act § 203(b)(2). As a condition precedent to this step by the Secretary of the Treasury, a recommendation that triggering Title II is necessary must be made upon a two-thirds vote of the Board of Governors of the Federal Reserve System and the board of directors of the FDIC, or, in the case of a broker-dealer or a

failure of a regional banking organization would present circumstances under which such a determination could be even be made.[12]

Because the concerns and the complexities that an SPOE resolution is designed to mitigate are not presented by regional banking organizations, *ex ante* prudential requirements imposed on systemically important financial institutions are unnecessary for regional banking organizations and other institutions that are unlikely to require Title II resolution.

III. Requirements to hold minimum aggregate amounts of equity and long-term holding company debt are unnecessary for regional banking organizations.

We understand that the Federal Reserve expects to seek comment on a notice of proposed rulemaking to establish minimum requirements for the aggregate level of equity and long-term unsecured debt at the holding company in order facilitate the successful implementation of an SPOE strategy. Although we expect to comment on that specific proposal once issued, including the proposed scope and requirements, the Notice does raise a threshold question with respect to such a requirement: which institutions should be required, on a prospective basis, to maintain a minimum aggregate level of equity and long-term unsecured debt at the holding company level for the sole purpose of ensuring that such institutions could be resolved under Title II through an SPOE strategy.

As discussed in Part II, any such *ex ante* minimum holding company equity and long-term debt requirement should be limited to those institutions that likely would be resolved under Title II. The Basel Committee on Banking Supervision and the Financial Stability Board (the "FSB") have developed an internationally agreed-upon framework for identifying banking organizations whose distress or disorderly failure would cause significant disruption to the wider financial system and economic activity,[13] which uses criteria similar to those used by the Financial Stability Oversight Council ("FSOC") for assessing whether a nonbank financial company may pose a threat to financial stability and should therefore be subject to supervision by the Federal Reserve.[14] The FSB framework captures such factors as level of complexity, risk profile, scope of operations, and international activity, as well as size. Additionally, the Dodd-Frank Act itself directs the FSOC to take into account similar criteria in making any recommendations to the Federal Reserve regarding enhanced supervision and prudential

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financial company the largest U.S. subsidiary of which is a broker-dealer, the commissioners of the Securities and Exchange Commission, instead of the FDIC's board. *See* Dodd-Frank Act § 203(a)(1).

[12] The joint Federal Reserve and FDIC resolution plan rules implicitly recognize that regional banks are less likely to pose systemic risk upon failure than larger and more complex organizations. *See*, *e.g.*, 12 C.F.R. §§ 243.3(a)(1)(iii) and 381.3(a)(1)(iii). Each of the undersigned regional banking organizations has less than $100 billion in total nonbank assets and was part of the third and last round of resolution plan filers.

[13] *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).

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

standards for bank holding companies.[15] Under these criteria, any minimum holding company equity and long-term debt requirement designed to facilitate a Title II resolution should be limited to those institutions previously identified by the FSB and FSOC, principally the G-SIBs.

No regional banking organization has been identified as presenting such risks, and, as discussed above, no regional banking organization is likely to require resolution under Title II. Accordingly, there is no basis for imposing the costs and burden of a minimum long-term debt requirement at the holding company of a regional bank to implement an SPOE strategy. A requirement to maintain an aggregate level of equity and long-term unsecured debt for regional banking organizations, which can be resolved through the U.S. Bankruptcy Code and the FDIA, without resorting to Title II, would unnecessarily make them larger, increase their leverage, and add unnecessary risk to the system. Finally, to the extent regional banking organizations would be required to carry unnecessary holding company debt, as opposed to funding through deposits, it would increase the cost of credit to "Main Street" during a delicate recovery period for the U.S. economy.

IV. If an SPOE strategy is implemented in the United States, any potential funding advantages would appropriately be offset by forthcoming regulatory requirements applicable to G-SIBs.

In the Notice, the FDIC seeks comment on whether systemically important financial institutions benefit from perceived funding advantages, the effect on non-systemically important financial institutions, and the impact of the SPOE strategy on any such advantages. We do not comment here on the validity of any studies as to whether or not U.S. G-SIBs benefit from any funding advantages.[16] We believe, however, that to the extent any funding advantage exists, it would be offset by the development of an SPOE framework for resolving a G-SIB along with the implementation of other measures that the regulators already have indicated they plan to propose and that, if implemented, should apply only to G-SIBs. For example, the imposition of a minimum aggregate holding company equity and long-term debt requirement for G-SIBs would, at least partially, offset any lower cost of funding that operating subsidiaries of a G-SIB might receive as a result of the structural subordination benefits provided to operating subsidiary creditors by the SPOE strategy. Moreover, under the framework developed by the Basel Committee on Banking Supervision and the Financial Stability Board, the U.S. G-SIBs currently would be required to hold between 1% and 2.5% of additional common equity tier 1 capital. In addition, the enhanced supplementary leverage ratio that the banking agencies have proposed would apply only to those U.S. organizations currently identified as a G-SIB.[17] Finally, we

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15 *See* Dodd-Frank Act § 115(a)(2)(A). These criteria include capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors the FSOC deems appropriate.

16 We note there is significant debate regarding the existence and extent of funding advantages for the largest and most complex banking organizations.

17 *See 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).

believe that the additional capital surcharges that the Federal Reserve is presently considering to address potential reliance on short-term wholesale funding should also apply only to G-SIBs in light of the more stable funding profiles of regional banks as noted above.[18]

* * *

The undersigned thank the FDIC for its efforts to implement an effective Title II resolution framework. We also appreciate the opportunity to comment on the Notice and respectfully ask for consideration of the comments 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,

BBVA Compass Bancshares, Inc.
Capital One Financial Corporation
Fifth Third Bancorp
The PNC Financial Services Group, Inc.
SunTrust Banks, Inc.
TD Bank US Holding Company

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[18] We do not believe such a requirement should apply to regional banks because they do not rely to a significant degree on short-term wholesale funding.

Attachment 1

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Attachment 2

Balance Sheet Composition, Funding Profile, and International Activity

Balance Sheet Composition (as of Sept. 30, 2013)[i]					
Banking Organizations	Net Loans & Leases / Total Assets (%)	Total Trading Assets / Total Assets (%)	Total Trading Liabilities / Total Liabilities (%)	4(k) Broker-Dealer Assets / Total Assets (%)[ii]	Derivative Contracts (Notional) / Total Assets (%)
G-SIB–Average	25%	16%	7%	19%	2,549%
Regional Banks	65%	<1%	<1%	<1%	54%

Funding Profile (as of Sept. 30, 2013)[i]						
Banking Organizations	Reliance on Wholesale Funding (%)[iii]	Core Deposits / Total Assets (%)	Loans / Deposits (%)	Reverse Repurchase Agreements (%)	Sec. Sold/Repo / Total Liabilities (%)	Net Short-term Liabilities/ Assets (%)[iii]
G-SIB–Average	46%	29%	61%	15%	11%	-21%
Regional Banks	16%	72%	88%	<1%	1%	-6%

International Activity (as of Sept. 30, 2013)[i]		
Banking Organizations	Total Foreign Deposits / Total Deposits (%)	Avg. Foreign Loans / Avg. Total Loans (%)
G-SIB–Average	28%	18%
Regional Banks	1%	<1%

[i] Average data is presented for (i) U.S. G-SIBs (JPMorgan Chase & Co., Bank of America Corporation, Citigroup Inc., Wells Fargo & Company, The Goldman Sachs Group, Inc., Morgan Stanley, The Bank of New York Mellon Corporation, and State Street Corporation), and (ii) a group of regional banking organizations including U.S. Bancorp, Capital One Financial Corporation, The PNC Financial Services Group, Inc., BB&T Corporation, SunTrust Banks, Inc., Fifth Third Bancorp, Regions Financial Corporation, KeyCorp, M&T Bank Corporation, Comerica Incorporated, Huntington Bancshares Incorporated, TD Bank US Holding Company, BBVA Compass Bancshares, Inc., and RBS Citizens Financial Group, Inc. The source of all information is SNL – FR Y-9C. Data reported as 'N/A' was treated as a zero for purposes of these calculations.

[ii] Broker-dealer asset data are included only for broker-dealer subsidiaries of financial holding companies that engage in underwriting or dealing pursuant to section 4(k)(4)(E) of the Bank Holding Company Act, as reported on line item 20.a. of Schedule HC-M to the FR Y-9C.

[iii] These ratios are used by the Office of the Comptroller of the Currency as part of its Canary supervisory system and derived using publicly available FR Y-9C and call report data.