

December 12, 2016

VIA ELECTRONIC SUBMISSION

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Notice of Proposed Rulemaking, *Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions* (RIN 3064-AE46)

Dear Sir or Madam:

On behalf of the Virginia Retirement System (“**VRS**”), Sutherland Asbill & Brennan LLP respectfully submits this letter in response to the request for public comment set forth in the Federal Deposit Insurance Corporation’s (the “**FDIC**”) Notice of Proposed Rulemaking, *Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions* (the “**Proposed Rule**”).¹

VRS is an independent agency of the Commonwealth of Virginia that administers pension plans and other services for approximately 660,000 of Virginia’s current and former public sector employees and beneficiaries, including teachers, state employees, local law enforcement officers, firefighters, and emergency medical technicians. As part of its diversified portfolio, VRS uses derivatives, forward security agreements, and repurchase agreements to manage risk exposure and enhance returns on investments.

The Proposed Rule would limit the rights of counterparties to uncleared qualified financial contracts (“**QFCs**”) with certain affiliates of global systemically important banking

¹ Notice of Proposed Rulemaking, *Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions*, 81 Fed. Reg. 74,326 (Oct. 26, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-10-26/pdf/2016-25605.pdf>.

organizations (“**GSIBs**”). Specifically, under the Proposed Rule, certain affiliates of GSIBs (*i.e.*, “**Covered Banks**”) would not be permitted to transact under QFCs (“**Covered QFCs**”) unless those QFCs comply with the requirements of the Proposed Rule. Although the requirements of the Proposed Rule would be imposed expressly on Covered Banks, the resulting effect would directly impact pension plans administered by VRS, because, as part of its core mission in assisting Virginia employees to meet their financial needs in retirement, VRS commonly utilizes Covered QFCs in its investment strategies and routinely trades Covered QFCs with Covered Banks.

VRS respectfully requests an amendment to the Proposed Rule so that Covered Banks would not be required to conform their Covered QFCs with government plans, like VRS, to the proposed requirements. Such a limited amendment is appropriate because government plans act as fiduciaries² for current and former state employees and the Proposed Rule would require VRS to waive rights that arguably run to the benefit of such stakeholders. Rather than enacting a rule under which a federal agency could effectively require a state agency to enter into certain agreements that relate to the core function of that state agency, a better course would be for the FDIC to allow government plans to make such contractual arrangements as they may deem necessary. In context, the FDIC should only encourage Covered Banks to amend their trading documents with government plans, perhaps by entering into the ISDA Resolution Stay Jurisdictional Modular Protocol, but the FDIC should stop short of compelling Covered Banks from refusing to trade with government plans that have not agreed to such amendments.

VRS appreciates this opportunity to provide comments on the Proposed Rule and respectfully requests that the FDIC consider the comments set forth herein.

If you have any questions, please contact the undersigned.

Respectfully submitted,

/s/ David T. McIndoe

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² For example, Section 51.1-124.30(C) of the Code of Virginia requires the Board of Trustees of VRS to discharge its duties with respect to the VRS “solely in the interest of the beneficiaries thereof....” Va. Code Ann. § 51.1-124.30(C).