June 21, 2019

Via Electronic Mail

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Re: *(1) Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies: Federal Reserve Docket No. R-1658 and RIN 7100-AF45; (2) Proposed Changes to Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements for Foreign Banking Organizations: Federal Reserve Docket No. R-1628B and RIN 7100-AF21, OCC Docket ID OCC-2019-0009 and RIN 1557-AE63, FDIC RIN 3064-AE96*

Ladies and Gentlemen:

The Toronto-Dominion Bank ("TD") appreciates the opportunity to provide comments to (1) the Board of Governors of the Federal Reserve System (the "Federal Reserve") on certain aspects of the notice of proposed rulemaking regarding proposed changes to the enhanced prudential standards ("EPS") applicable to foreign banking organizations (the "EPS Proposal")[1] and (2) the Federal Reserve, the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") (the Federal Reserve, OCC and FDIC together, the "Agencies") on certain aspects of the notice of proposed rulemaking regarding proposed changes to the applicability thresholds for certain regulatory capital and liquidity requirements applicable to foreign banking organizations and certain of their U.S. subsidiaries (the "Capital/Liquidity Proposal").[2] In this letter, we refer to the EPS Proposal and the Capital/Liquidity Proposal, including their respective preambles and proposed rule texts, jointly as the "Proposal."

[1] "Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies," 84 Fed. Reg. 21988 (May 15, 2019).

[2] "Changes to Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries," 84 Fed. Reg. 24296 (May 24, 2019).

We are generally supportive of the Agencies' efforts to tailor application of EPS requirements and capital and liquidity requirements to both U.S. bank holding companies ("BHCs") and foreign banking organizations ("FBOs") based on their risk profiles, and the recognition of the need for alignment between the Proposal and the companion proposal for U.S. BHCs.[3] We have long believed that applicability and stringency of EPS requirements for both BHCs and FBOs in the U.S. should be based on an assessment of the risk they present and not on general or non-risk-related attributes. The Proposal makes progress toward tailoring prudential regulations to the risk profiles of the U.S. operations of FBOs and establishing a dynamic regulatory framework that accounts for the differences among FBOs and U.S. BHCs. However, with further modifications, the Proposal would better achieve the goal of appropriate EPS tailoring with a framework that more fully accounts for the unique features of FBOs and promotes parity between U.S. BHCs and IHCs, to the benefit of our shared U.S. customers.

We discuss several recommendations for improvements on the Proposal in Part II below. However, we especially note that:

1. The liquidity requirements and other EPS applicable to IHCs should be based solely on the characteristics of the IHC, not on the FBO parent bank's combined U.S. operations ("CUSO").

2. Given its importance in the categorization framework in the Proposal, adjustments to the weighted short-term wholesale funding ("wSTWF") risk-based indicator are needed to make it more risk-sensitive. In particular, the wSTWF indicator should recognize, as other rules do, the stability of insured affiliate-brokered sweep deposits as a source of funding.

We also have contributed to the development of comment letters on the Proposal submitted by the Institute of International Bankers ("IIB"), the Bank Policy Institute ("BPI"), and the Canadian Bankers Association ("CBA"). We support the comments made by those organizations, including with respect to issues involving national treatment, competitive equality, and recognition of home country regulation, and this letter is intended to supplement those comments.

I. ABOUT TD

TD is a Schedule I bank chartered under the Bank Act in Canada and is a top 10 financial services company in North America. Headquartered in Toronto, with more than 85,000 employees in offices around the world, TD and its subsidiaries offer a full range of financial products and services to approximately 26 million customers worldwide. TD also ranks among the world's leading online financial services firms, with approximately 13 million active online and mobile customers. TD's operations are subject to the supervision and regulation of the Canadian Office of the Superintendent of Financial Institutions ("OSFI").

TD Group US Holdings LLC ("TDGUS") is a financial holding company under the Bank Holding Company Act and TD's U.S. intermediate holding company ("IHC"). TDGUS holds all of TD's U.S. subsidiaries, including TD's two U.S. insured depository institutions, TD Bank, N.A. ("TD Bank") and TD Bank USA, N.A. (collectively, the "Banks"), and TD Securities USA, a registered broker-dealer.

[3] EPS Proposal at 21990 (The Proposal "is designed to more precisely address the risks presented by foreign banking organizations to U.S. financial stability in a manner that broadly aligns with the domestic proposal.").

TD's retail banking story in the U.S. started in earnest more than a decade ago with TD's acquisition of 51% of BankNorth in New England in 2005, followed by a steady strategy of acquiring regional institutions such as Commerce Bank (2008) and Riverside National Bank and The South Financial Group (2010).[4] In each instance and with each acquisition, the bank worked hard to ensure that we maintained a strong connection to our customers by keeping them at the center of everything we do, while also continuing our tradition of enriching the communities in which we serve. Today TD Bank, America's Most Convenient Bank, is one of the 10 largest banks in the U.S., with over 27,000 employees and deep roots in the community dating back more than 150 years. TD Bank offers a broad array of retail, small business and commercial banking products and services to more than 9 million customers through our extensive network of approximately 1,250 retail stores throughout the Northeast, Mid-Atlantic, Metro D.C., the Carolinas and Florida.

In addition to banking products, TD Bank and its subsidiaries provide clients with customized private banking and wealth management services through TD Wealth and vehicle financing and dealer commercial services through TD Auto Finance.

II. RECOMMENDATIONS TO BOLSTER RISK-SENSITIVITY AND TAILORING

We support the comprehensive recommendations made by IIB, BPI and CBA, and believe that a broad review of the Proposal is warranted to better achieve a risk-based categorization framework for FBOs' U.S. operations. However, we believe it is important to emphasize several points of particular concern for TD regarding the Proposal's approach to tailoring that would place new burdens on IHCs based on CUSO-level risks and its insufficient sensitivity to risk and tailoring of the categorization framework, particularly in the case of the wSTWF and cross-jurisdictional activity ("CJA") metrics and Category III stress testing requirements.

A. The liquidity requirements and other EPS should be applied solely on the characteristics of the IHC, not those of the FBO parent bank's CUSO.

Under the Proposal, liquidity requirements, as well as certain other EPS, would apply to an IHC based on the risk attributes of the FBO parent bank's CUSO. This approach means that an IHC could become subject to heightened requirements that are disproportionate to the risk that the IHC's own operations present to financial stability. This approach is inconsistent with the stated goal of the tailoring effort to apply EPS in a manner commensurate with the risk of an institution. When coupled with the outsized emphasis placed on the wSTWF metric (as discussed below), using a CUSO measurement could subject an IHC to more stringent liquidity requirements based on operations and risks beyond its purview. The Proposal's approach penalizes an IHC for perceived risks of its parent FBO's branch and agency operations, without acknowledging the substantial benefits to the IHC of having a strong parent. Further, this approach fails to recognize that the FBO parent's global operations are subject to robust consolidated supervision by its home-country regulator, and the prior decade of global regulatory and structural

[4] TD Bank's acquisition of Riverside National Bank in 2010 was part of a transaction in which TD Bank acquired three unaffiliated failed banks in Florida in April 2010. See https://www.fdic.gov/news/news/press/2010/pr10078.html. That transaction was a testament not only to the strength and resiliency of TD as an enterprise, but also to TD's commitment to the U.S. retail market and the growth and prosperity of its U.S. retail operations during what turned out to be the peak of the financial crisis-era bank failures. See https://www.fdic.gov/bank/historical/bank/.

changes designed to address those perceived risks. This is both insufficient as a tailoring exercise, and not consistent with the home-host relationship balance.[5]

Moreover, we believe this approach is ineffective in addressing any Agency concerns regarding risks posed by an FBO's branch and agency network. For example, an IHC that has a retail bank as its primary subsidiary, such as TDGUS, would be limited in its ability to provide liquidity support to its parent FBO's branches since the transfer of liquidity from the subsidiary bank to the branch would be a covered transaction under Section 23A of the Federal Reserve Act. Therefore, applying liquidity requirements to IHCs based on the attributes of the CUSO would result in extra burdens to, and inefficient use of resources of, the IHC without creating more liquidity that could be useful to branches and agencies in a crisis.

A less punitive and more effective alternative would be to use a different set of tools to manage more directly the risks in the branch and agency network, including existing supervisory and examination tools, the Regulation YY liquidity stress testing and liquidity buffer, Regulation W separation rules, and certifications of compliance by the FBO with comparable or internationally agreed home-country standards.

We note that the Agencies have requested comment on potentially applying standardized liquidity rules to the branches of FBOs. That issue should be wholly separate from how the IHC is subjected to liquidity requirements, and IHC requirements should not be used to presuppose or compensate for such regulation before its due consideration and study.

B. Given its importance to the categorization framework, the wSTWF risk-based indicator should be more risk-sensitive, including by recognizing, as other rules do, the stability of insured affiliate-brokered sweep deposits.

1. The Proposal places disproportionate emphasis on the wSTWF metric.

The wSTWF metric plays an outsized role when it comes to determining the liquidity requirements applicable to IHCs, and as a result, diminishes the effectiveness of the Agencies' efforts to better tailor regulations based on risk. First, the Federal Reserve itself estimates that several IHCs would be elevated from Category III to Category II liquidity standards because of this metric alone, while few U.S. BHCs would be so acutely affected by one risk-based indicator under the domestic tailoring proposal. Second, merely moving from $74B to $75B in wSTWF and thereby triggering this one threshold in a single risk-based indicator can multiply the operational burdens and compliance costs by triggering the most stringent liquidity and liquidity reporting requirements.[6] Third, as highlighted in Section II.A above, an IHC may be disproportionately affected because of the wSTWF metric of its FBO parent bank's CUSO, notwithstanding the IHC's own attributes. To us, these issues evidence a metric that, if not sufficiently sensitized to risk, has the capability to, by itself, undermine the goal of appropriate tailoring across a range

[5] See Randal K. Quarles, Vice Chairman for Supervision, Federal Reserve, Trust Everyone—But Brand Your Cattle: Finding the Right Balance in Cross-Border Resolution (May 16, 2018) ("Brand Your Cattle Speech").

[6] In implementing the Regulation YY framework, the Federal Reserve sought to design the final rule to "reduce the potential that small changes in the characteristics of [an FBO] would result in sharp, discontinuous changes in the standards." "Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations," 79 Fed. Reg. 17240, 17243 (Mar. 27, 2014).

of institutions. Thus, additional care should be taken in ensuring the risk-sensitivity of this metric, and we offer recommendations below.

> 2. ***This outsized influence of wSTWF results in the application of unnecessarily punitive liquidity standards to Category III institutions with $75 billion or more in wSTWF.***

Under the Proposal, if an FBO's IHC or CUSO is otherwise in Category III but has $75 billion or more in wSTWF, the liquidity requirements would shift from (i) reduced daily LCR/NSFR to (ii) full daily LCR/proposed NSFR. In addition, reporting on the Form FR 2052a would go from monthly to daily. This rapid escalation in standards should be revisited for several reasons.

First, as discussed above, we believe that applying more stringent liquidity standards to IHCs based on CUSO metrics is inconsistent with the goal of tailoring and does not correspond to IHC risk.

Second, the wSTWF indicator as it currently stands should not be used as a trigger for these escalated liquidity standards. We highlight several additional points below, but we are drawn to a statement that the Federal Reserve used to justify the use of wSTWF for more stringent daily reporting. The EPS Proposal notes:

> Daily reporting is appropriate for a foreign banking organization with heightened levels of weighted short-term wholesale funding, because a firm that relies more on unsecured, less stable funding relative to deposits typically must roll over liabilities in order to fund its routine activities. Accordingly, short-term wholesale funding can be indicative of a firm that has heightened liquidity risk.[7]

While we understand the Federal Reserve's concern with less stable sources of funding, some of the sources of funding included in the wSTWF metric <u>are</u> stable. In particular, as discussed below, insured affiliate-brokered retail deposits, such as the Banks' sweep program with TD Ameritrade, are very stable, not subject to rapid outflow and not in danger of needing to be "rolled." For these reasons, and those we explain below, the wSTWF indicator is not appropriately calibrated and is too blunt and broad a metric to be the determinant of significantly more stringent requirements.

Third, it does not appear that the Agencies have provided either quantitative or qualitative support for establishing the $75 billion wSTWF threshold to <u>increase</u> liquidity requirements for IHCs in Category III. An indication of changed circumstances or of the ineffectiveness of the current regulatory regime, as applied to the IHCs, would be necessary to justify the additional burdens and compliance build.

Accordingly, given the above three reasons, the threshold trigger for heightened liquidity requirements does not appear to result in appropriate categorization. Daily FR 2052a reporting and the full daily LCR are reasonable for Category I institutions (and perhaps other institutions identified by robust criteria that pose the greatest systemic liquidity risk in the U.S.), but are not a tailored fit for institutions

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[7] EPS Proposal at 22002.

with less systemic importance. We discussed this issue in our 2014 comment letter[8] on the 2013 notice of proposed rulemaking for the LCR,[9] noting that the requirements for the application of the full LCR inappropriately captured several regional banking organizations (including TD's U.S. retail operations). This overbroad inclusion of regional banking organizations occurred even though the intent of the 2013 LCR Proposal had been for the full LCR requirement to apply only to large internationally active banking organizations whose liquidity stress would have greater systemic impact.[10] Currently, in this 2019 Proposal, there is a risk of the unnecessary application of the LCR and related reporting burdens being repeated for some banks despite the Proposal's objective to tailor EPS. While the Proposal would appear to grant relief for institutions that TD considers to be peer regional banks of its IHC—for example, projected Category III banks U.S. Bancorp, PNC Financial Services Group, Inc. and Capital One Financial Corporation[11]—TD would remain subject to the full LCR and would become subject to daily FR 2052a reporting.

The Proposal represents an opportunity to tailor the full daily LCR requirements so that they apply appropriately to a smaller group of banking organizations that present more systemic risks to the U.S. economy than retail-focused organizations. This could be accomplished by reconsidering the $75 billion wSTWF threshold as a Category III trigger for the application of the full LCR or by making the wSTWF risk-based indicator more risk-sensitive. The Agencies should undertake similar tailoring regarding the requirement to engage in daily FR 2052a reporting. Daily reporting should apply only to the most systemically important institutions and not to any firm in Category III (and not necessarily to some firms in Category II, either). This tailoring is of particular importance to affected institutions because of the

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[8] TD Bank US Holding Company ("TDBUSH") Letter to the Agencies (January 31, 2014). At submission, TDBUSH served as TD's top-tier U.S. BHC. Subsequently, as part of TD's plan to comply with Regulation YY's IHC requirement, TDGUS was redomesticated in the U.S. and designated as TD's IHC as of July 1, 2016. TDBUSH is now a subsidiary of TDGUS.

[9] "Liquidity Coverage Ratio: Liquidity Risk Management, Standards and Monitoring", 78 Fed. Reg. 71818 (November 29, 2013) (the "2013 LCR Proposal").

[10] See, e.g., 2013 LCR Proposal at 71819 and 71846.

[11] The Board Memorandum accompanying the version of the Proposal applicable to U.S. bank holding companies projected that U.S. Bancorp, PNC Financial and Capital One would be in Category III. See Federal Reserve Memo, "Notices of proposed rulemaking to tailor prudential standards" (October 24, 2018), available at https://www.federalreserve.gov/aboutthefed/boardmeetings/files/board-memo-20181031.pdf, at 16. It would appear that these institutions would move down from full LCR to reduced LCR status and would continue to file the FR 2052a monthly.

TD believes that these three institutions maintain a focus similar to TD's U.S. operations on retail branch networks, retail deposits/lending and retail brokerage. Therefore, the additional pressure put on our IHC by the CUSO or FBO attributes would significantly and negatively impact our competitive position and regional banking model, and be inconsistent with the Federal Reserve's statutory mandate to take into account competitive equality and to provide a level playing field. See, e.g., Randal K. Quarles, Vice Chairman for Supervision, Federal Reserve, Opening Statements on Proposals to Modify Enhanced Prudential Standards for Foreign Banks and to Modify Resolution Plan Requirements for Domestic and Foreign Banks (Apr. 8, 2019) ("[I]n approaching this objective for [FBOs], we had two additional objectives that we sought to achieve: creating a level playing field between [FBOs] operating in the United States and domestic firms of similar size and business models, and giving due regard to the principle of national treatment"); Semi-Annual Testimony on the Federal Reserve's Supervision and Regulation of the Financial System, Hearing Before the S. Comm. on Banking, 115th Cong. (2018) (testimony of Randal K. Quarles, Vice Chairman for Supervision, Federal Reserve) ("We need to ensure that we have a level playing field, that firms that are alike are treated alike, that's very important."); Brand Your Cattle Speech ("From a competitive equality standpoint, we believe that U.S. subsidiaries of foreign banks should operate on a level playing field with their domestic counterparts.").

substantial outlay of resources and technology investment that adherence to both daily FR 2052a reporting and the full daily LCR requires.

3. *Accordingly, the wSTWF metric should be modified so that it functions more as an indicator of risk. In particular, the wSTWF indicator should recognize, as other rules do, the stability of insured affiliate-brokered sweep deposits.*

a) *The Proposal overestimates the risk of insured affiliate-brokered sweep deposits.*

As proposed, the wSTWF risk-based indicator does not adequately differentiate between more and less stable forms of funding and, consequently, would overstate an IHC's and CUSO's exposure to risk from wSTWF in a variety of ways. Of particular relevance to TD is the way the Proposal includes insured affiliate-brokered retail sweep deposits in the calculation of short-term funding without taking into account the relative stability of these deposits.

Under the Proposal, the wSTWF metric is calculated in accordance with Schedule G on form FR Y-15, which generally weights brokered sweep deposits at 25%, irrespective of their source or insurance status.[12] The Federal Reserve has not provided qualitative or quantitative support for why this wSTWF weighting is appropriate given these deposits' risk, particularly in light of the difference in LCR outflow rate (discussed below) for insured affiliate-brokered sweep deposits. This single coefficient is not finely calibrated to liquidity risk and is not the right approach for establishing a risk-based indicator for purposes of tailoring application of liquidity requirements. Other EPS and prior analyses of the Agencies have yielded more risk-sensitive coefficients depending upon the type of short-term funding. In the context of a "tailoring" proposal, greater incorporation of existing, more tailored analyses would be appropriate. Calculation of the wSTWF metric should distinguish between funding sources based on their relative stability and, in doing so, should recognize the stability of insured affiliate-brokered sweep deposits specifically.

b) *Affiliate-brokered sweep programs are designed to be stable.*

Investment sweep programs involve the transfer (or "sweep") of free cash balances in investment accounts to an insured depository institution, frequently an affiliate of the broker, at the client's election. The goal is to protect uninvested funds in an insured deposit account while keeping those funds available for future investment. Affiliated sweep programs typically are just one part of a more complete suite of investment and banking solutions provided across affiliated entities to drive deeper client engagement.

The Banks offer a sweep service to brokerage clients of TD Ameritrade, a retail broker affiliate of the Banks.[13] TD Ameritrade provides a full spectrum of services for individual U.S. investors including an active trader program, long-term investor solutions, a national branch system, as well as relationships with one of the largest networks of independent registered investment advisors. The Banks and TD Ameritrade share a common marketing brand and the Banks provide banking services to TD

[12] See Form FR Y-15, Schedule G, Line Item 5, Column A, Item 1(e) (encompassing brokered sweep deposits).

[13] TD indirectly owns approximately 42% of TD Ameritrade.

Ameritrade brokerage customers that include checking, ACH, and debit card capabilities. These relationships among affiliates enhance the overall customer experience and customer loyalty to TD.

Affiliated sweep programs are distinguishable in a number of ways from other types of brokered deposits that may present a heightened liquidity risk:

- As discussed further below, affiliate sweep deposits are stable and exhibit balance permanence characteristics associated with stable or "core" retail or small business deposits rather than the volatility that underlies liquidity concerns about brokered deposits generally.

- The interest rate paid on swept balances is typically based on overnight market rates and is not an above-market "teaser" rate used to attract deposits. Since interest rates are not a significant motivating factor for customers for their sweep deposits, customers are not likely to move these deposits to other banks to obtain higher rates.

- The sweep program is an ancillary service associated with the customer's existing relationship with the affiliated financial services firms, and the customer is unlikely to think of the sweep deposit as a separate pool of funds outside of the customer's relationship with the affiliated broker-dealer. Moreover, the brokerage firm is not in the business of soliciting and placing deposits and does not engage in any active marketing to promote the sweep program or attract deposits for the purpose of sweeping them to the affiliated bank.

c) *Our experience indicates that affiliate-brokered sweep deposit balances are, in fact, quite stable.*

The affiliate-brokered sweep deposit account offered through TD Ameritrade is illustrative of a stable deposit funding program. Our analysis of these deposits (both insured and uninsured) shows that deposit account balances remain stable as a percentage of overall account assets under management balances. These balances continue to have low correlations to changes in short term interest rates. Since 2009, 30-day cumulative declines in the average balance per funded account reached a maximum decline of just 4.9%. And, most months, the variance in cash per funded account ranged between a gain and loss of 1% in each direction.

In our experience, the stability of affiliate-brokered sweep deposits results from the underlying client relationship between the retail customer and the broker, the affiliate relationship between the broker and the bank, and the affiliated agreements governing such programs (which might not require the same kind of contractual concessions that might be necessary to attract deposits from an unaffiliated broker). For example, the Banks' sweep program with TD Ameritrade is governed by a long-term agreement which clearly outlines 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 an accelerated return of deposits.

Further, average sweep deposit balances from an affiliate program tend to be relatively small, thus meaning that the vast majority are FDIC-insured and represent a stable proportion of total client assets under management on a per-client basis over time. The Banks' sweep deposit program with TD Ameritrade allows customers to sweep deposits to both Banks and obtain $250,000 of deposit insurance at each bank, for an aggregate insured deposit balance of $500,000 per customer. In general, the balances swept from each customer's brokerage account tend to be under that $500,000 limit and, as a result, the overwhelming majority of deposits swept to the Banks from TD Ameritrade are insured. Approximately 95% of our current sweep deposit balances are FDIC-insured. At the portfolio level, a large number of small balance accounts in combination with the high rate of deposit insurance coverage leads to a high level of stability.[14]

Our experience with respect to the stability of affiliate-brokered sweep deposits is consistent with observations by the Agencies in other contexts. In the final LCR rules, the Agencies described the advantages of insured affiliate-brokered sweep deposit programs, noting:

> Affiliated brokered sweep deposits generally exhibit a stability profile associated with retail customers, because the affiliated sweep providers generally have established relationships with the retail customer that in many circumstances include multiple products with both the covered company and the affiliated broker-dealer. Affiliated brokered sweep deposit relationships are usually developed over time. Additionally, the agencies believe that because such deposits are swept by an affiliated company, the affiliated company would be incented to minimize harm to any affiliated depository institution.[15]

In contrast, the Agencies described the possible disadvantages of *unaffiliated* brokered sweep deposits as the potential for balances in such accounts to fluctuate significantly depending on the nature of the contractual relationship between the banking organization and the unaffiliated broker, as well as the ability of this third-party intermediary to "move entire balances away from the bank."[16]

Similarly, the NSFR proposal observed:

> A typical brokered sweep deposit arrangement place deposits, usually those in excess of deposit insurance caps, at different banking organizations, with each banking organization receiving the maximum amount that is covered by deposit insurance, according to a priority "waterfall." Within the waterfall structure, affiliates of the deposit broker tend to be the first to receive deposits and the last from which deposits are withdrawn. With this affiliate relationship, a covered company is more likely to receive and maintain a steady stream of brokered sweep deposits. Based on the reliability of this stream of brokered sweep deposits and the enhanced stability associated with full deposit insurance coverage, the proposed rule would treat this type of

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[14] See, e.g., 2013 LCR Proposal at 71835 and Basel Committee on Banking Supervision, "Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools" (January 2013), available at https://www.bis.org/publ/bcbs238.pdf at paragraphs 73-78 (the "Basel Committee Report"). The portions we reference of the 2013 LCR Proposal and the Basel Committee Report discuss the stability of insured retail deposits, which we believe (and the Agencies believe—see footnote 19 below and accompanying text) to share characteristics of stability with our insured affiliate-brokered sweep deposits. Under the LCR rules, in cases where a customer has another relationship with the bank, FDIC-insured retail deposits carry only a 3% outflow rate; see 12 C.F.R. § 249.32(a)(1).

[15] "Liquidity Coverage Ratio: Liquidity Risk Management Standards", 79 Fed. Reg. 61440, 61493 (Oct. 10, 2014) (the "Final LCR Rules").

[16] Final LCR Rules at 61493.

brokered deposit, in the aggregate, as more stable than brokered sweep deposits received from unaffiliated institutions.[17]

d) *Due to their stability and the Agencies' previous analyses under liquidity rules, insured affiliate-brokered sweep deposits should receive a weighting lower than the untailored 25% weighting.*

The treatment of insured affiliate-brokered sweep deposits under the FR Y-15 is at odds with the treatment of such deposits under other relevant regulations, which are indicative of a more nuanced analysis of the relative risks (or lack thereof) of this type of funding:

- The LCR rules are a stressed measurement of liquidity outflows. Even under stressed scenarios, the LCR rules assign a 10% outflow rate to insured affiliate-brokered sweep deposits[18] and a 25% outflow rate to insured non-affiliate-brokered sweep deposits.[19] In contrast, the wSTWF risk-based indicator applies the same 25% weight to sweep deposits sourced by both affiliates and nonaffiliates alike.

- Similarly, while the proposed NSFR rules differ from LCR rules in that they (like the wSTWF indicator) are not a stressed measure, they also seek to assess the resilience of an institution's liquidity. In doing so, they treat insured affiliate-brokered sweep deposits as longer-term funding, with a relatively high 90% available stable funding factor.[20]

The treatment of insured affiliate-brokered sweep deposits on the FR Y-15 is an outlier when compared to other circumstances where the Agencies have undertaken a well-considered view of the risks of such deposits. The nature and design of affiliate sweep programs means that they do not present the type of concerns cited in the Proposal about short-term wholesale funding generally, including as the risk of funding runs, maturity mismatch, and interconnectedness among market participants. Accordingly, the more risk-sensitive and better tailored view of insured affiliate-brokered sweep deposits taken by the Agencies in these analogous rules should be carried through the FR Y-15 calculation and the wSTWF indicator. Applying a lower weight—e.g., 10%, as is the case in the LCR rules—to insured affiliate-brokered sweep deposits in the wSTWF indicator would make this important metric more finely calibrated to the relevant risks. A risk-based indicator aligned with the LCR rules' treatment of insured affiliate-brokered sweep deposits would have the added benefits of regulatory consistency, operational simplicity and greater accuracy regarding the risks of brokered sweep deposits as a source of funding.

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[17] "Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements", 81 Fed. Reg. 35124, 35157 (Jun. 1, 2016) (the "NSFR Proposal").

[18] 12 C.F.R. § 249.32(g)(7).

[19] 12 C.F.R. § 249.32(g)(8).

[20] See NSFR Proposal at 35157.

4. ***The risks of short-term wholesale funding can be addressed more accurately and sensitively through several additional modifications to the wSTWF risk-based indicator.***

The Agencies also should consider other changes to the FR Y-15 calculations, in order to tailor this metric to observed risks.

- For maturities of 30 days or less (or no maturity date), we note that Schedule G on the FR Y-15 weights funding secured by level 1 liquid assets at 25%; funding secured by level 2A liquid assets at 50%; and funding secured by level 2B assets at 75%.[21] The LCR outflow rates for funding secured by comparable assets is much lower (0%, 25% and 50%, respectively, even though the LCR rates are intended to be stressed rates; these percentages also correspond to the same timeframe of maturities of 30 days or less).[22] We are concerned that the wSTWF metric is increased by these weights well in excess of the liquidity risk exhibited by such collateralized transactions.

- In addition, normal draws on government or quasi-government financing, such as draws on Federal Home Loan Bank lines or draws on Federal Reserve lines, both of which are highly collateralized and not particularly susceptible to calls from the lender, should not count toward the wSTWF calculation. We note that FHLB advances, for example, have a proven track record of stability[23] and were a notable source of liquidity to depository institutions during the 2008 financial crisis.[24] FHLB institutions also have a statutory "super lien" on collateral, which lessens the likelihood that funding will be reduced or withdrawn even during a stressed situation. It is evidence generally of insufficient tailoring to group this kind of funding together in the wSTWF risk-based indicator with other forms of funding that have historically been more susceptible to flight.

- The wSTWF indicator also should permit netting of wSTWF against the amount of cash in FBOs' Federal Reserve accounts (which itself is a high-quality liquid asset ("HQLA")). This excess cash in Federal Reserve accounts should be considered as a source of available liquidity to support any short-term repayments of wSTWF.

Getting the wSTWF risk-based indicator incorrect risks severely disproportionate application of key EPS, such as the LCR rules. Indeed, as the wSTWF metric is intended to tailor the requirements to the relative risk of a given firm, the metric itself should be more carefully risk-based and tailored. As currently applied under the Proposal the wSTWF metric is a blunt tool that, for purposes of measuring liquidity risk, fails to adequately differentiate between stable and less stable funding sources.

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[21] See Form FR Y-15, Schedule G, Line Item 5, Column A, Item 1.e (encompassing funding secured by level 1 liquid assets); Item 2.c (encompassing funding secured by level 2A liquid assets) and Item 3.d (encompassing funding secured by level 2B liquid assets). A 0.25 coefficient is applied to Item 1.e; a 0.5 coefficient is applied to Item 2.c, and a 0.75 coefficient is applied to Item 3.d.

[22] See 12 C.F.R. § 249.32(j)(1).

[23] See FHLBanks Office of Finance, "Investor Presentation" (May 2019), available at http://www.fhlb-of.com/ofweb_userWeb/resources/fhlbankpresentation.pdf at 30.

[24] See Adam B. Ashcraft et.al, "The Federal Home Loan Bank System: The Lender of Next-to-Last Resort?" Journal of Money, Credit and Banking, Vol. 42, No. 4 (June 2010).

To use a wSTWF metric that significantly overstates liquidity risk would be wholly inconsistent with the Agencies tailoring objectives and result in application of more stringent liquidity requirements on Category III IHCs where reduced requirements would otherwise be warranted based on a more accurate measure of their liquidity risk profile. It is, therefore, of utmost importance that the Agencies get this metric right and take the time to make it a true risk-based indicator of liquidity risk if they intend to use it to increase liquidity requirements on IHCs.

C. The CJA indicator should be modified to be more risk-sensitive and better reflect the attributes of FBOs.

We appreciate the changes that the Agencies have proposed to make the CJA indicator more responsive to the unique attributes of FBOs' U.S. operations. However, several important modifications would strengthen further the risk-sensitivity of, and the goals of using, this measure. Strengthening this measure is of particular importance given the outsized role it plays in determining whether an FBO is subject to Category II requirements. Cross-border transactions are inextricable from the business of the U.S. operations, as a subset of FBOs' global operations. Because it picks up a disproportionate amount of ordinary and low-risk FBO cross-border activity, the CJA indicator as proposed would still yield "false positives" about the riskiness of U.S. operations, rendering this measure uninformative and ineffective for purposes of applying EPS.

All sovereign exposures (including exposure to a political subdivision of a sovereign) and exposures to supranational, international and regional exposures should be excluded from the calculation of CJA. Exposures to sovereigns – particularly home country sovereigns (and their political subdivisions) – are generally not risky exposures, tend to be required exposures for FBOs and are generally used by all banks (U.S. and non-U.S.) for liquidity, interest rate and asset-liability management purposes. In addition, exposures to sovereigns do not raise the interconnectedness concerns that being part of a mesh of corporate and interbank exposures may raise. Regulations like the Volcker Rule are correct to exempt exposures to home country sovereigns from restrictions[25] and other regulations ascribe low risk to sovereign exposures generally.[26] The Agencies should take the same approach in tailoring the CJA risk-based indicator. If the Agencies choose to limit the amount of sovereign exposure that is exempt from the CJA indicator, we suggest that all home country sovereign exposures and sovereign exposures with a zero risk-weight under the U.S. capital rules should be excluded.

We also believe that exposures to supranational, international and regional organizations—regardless of where these organizations' headquarters are located—should not be included in the CJA risk-based indicator. These exposures are low-risk and U.S. capital rules assign zero risk weight to many such exposures.[27]

Finally, and more generally in support of the points above, cross-jurisdictional exposures to HQLA[28] and assets that receive a zero percent risk weight under the regulatory capital requirements[29] should not be included in the CJA calculation. Assets are characterized as HQLA, or as meriting a zero-risk

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[25] See 12 C.F.R. § 248.6(b)(1).

[26] See 12 C.F.R. § 217.32(a).

[27] See 12 C.F.R. § 217.32(b).

[28] See 12 C.F.R. §§ 50.20, 249.20.

[29] See 12 C.F.R. Parts 3, 217.

weight, because they are stable, low risk and do not embody the type of risk that the CJA indicator was formulated to capture.

D. Greater flexibility for Category III institutions in relation to supervisory and company-run stress testing will allow for more meaningful tailoring. The Proposal does not offer sufficient differentiation between Category II and Category III institutions with regard to stress testing requirements.

The Proposal would reduce the frequency of Regulation YY company-run stress tests for Category III IHCs by requiring that a Category III IHC conduct a biennial (rather than annual) company-run stress test under Regulation YY, and requiring reporting to the Federal Reserve and reporting publicly only for the biennial stress test required under Regulation YY.[30] Nevertheless, a Category III IHC would still be subject to annual CCAR and annual supervisory stress testing,[31] as well as the capital planning rule.[32]

Except for the biennial public disclosure requirement, the relief proposed by reducing the frequency of the company-run stress test is mostly illusory. A Category III IHC would still be required to (1) run its own stress test during the "off year" under the capital plan rule[33] and (2) submit the Form FR Y-14A, including stressed information under the scenarios provided by the Federal Reserve in order to feed into the annual CCAR and supervisory stress testing.[34] Therefore, other than biennial relief from preparing a standardized website posting of a company-run stress test disclosure, no real relief is provided to Category III IHCs relative to Category II institutions.

We suggest that additional flexibility be provided to Category III IHCs to more clearly differentiate capital and stress testing requirements from those applicable to Category II institutions and to achieve further tailoring between the two categories.

- First, in a Category III IHC's "off year" internal stress test, the Form FR Y-14A should provide projections using an IHC's own data only, and not the baseline or stress scenarios provided by the Federal Reserve. The Federal Reserve's own supervisory stress test models can use that data

[30] See proposed 12 C.F.R. § 252.54(a)(2)(ii), proposed 12 C.F.R. § 252.57(a) ("A covered company must report the results of the stress test required under § 252.54 to the Board in the manner and form prescribed . . .") and proposed 12 C.F.R. § 252.58(a)(1) ("A covered company must publicly disclose a summary of the results of the stress test required under § 252.54 . . ."). Because proposed § 252.54 requires only biennial company-run stress tests, the reporting sections also apply to only the biennial company-run stress test.

[31] 12 C.F.R. Part 252, Subpart E, as proposed to be modified by the domestic proposal (83 Fed. Reg. 61408 (Nov. 29, 2018)) and the Proposal.

[32] 12 C.F.R. § 225.8.

[33] 12 C.F.R. §§ 225.8(e)(2)(i) ("assuming both expected and stressful conditions"), 225.8(e)(2)(i)(A) (". . . under expected conditions and under a range of scenarios, including any scenarios provided by the Federal Reserve and at least one BHC stress scenario").

[34] See Instructions for the Capital Assessments and Stress Testing information collection (Reporting Form FR Y-14A) (expiration Dec. 31, 2020) at p. 3 ("BHCs and IHCs report projections on the FR Y-14A schedules across supervisory scenarios provided by the Federal Reserve (supervisory baseline, adverse and severely adverse), as well as BHC or IHC defined scenarios (BHC baseline and BHC stress)."). We note that the submission of the FR Y-14 suite of documents on an annual basis is somewhat at odds with the revisions to 12 C.F.R. § 252.57(a) which appear to require reporting to the Federal Reserve of company-run stress tests only in relation to the biennial stress tests performed under proposed revised 12 C.F.R. § 252.54.

to apply the stress parameters and scenarios, and complete the CCAR and DFAST exercises on an annual basis.

- Second, in a Category III IHC's "off year", under the capital planning rule, instead of requiring that the stressed capital plan projections be performed "under expected conditions and under a range of scenarios, including any scenarios provided by the Federal Reserve and at least one BHC stress scenario,"[35] we propose that a Category III IHC provide stressed projections only with respect to one stress scenario chosen by the IHC. In this way, the rule can be applied annually, but IHCs would be provided more flexibility, and would be able to relieve timing pressure on the business units and personnel that conduct the stress testing, as use of internal scenarios would mean that the team would not have to wait for the release of supervisory stress testing scenarios to begin running models.

We believe that to create more meaningful tailoring between Category II and Category III institutions, modifications such as these should be made before finalizing the categorization rules. More flexibility and use of solely internal scenarios during the "off years" would appropriately create tailoring benefits under the Proposal while maintaining the risk-mitigating benefits of both supervisory and company-run stress testing.

E. Commensurate with the goal of appropriate tailoring, the requirement to file daily FR 2052a reports should not be expanded.

Daily FR 2052a reporting represents a substantial burden for affected FBOs, particularly across the CUSO. According to the Federal Reserve's estimates, the number of FBO daily reporters would likely double—a significant increase, particularly in the context of a Proposal that aims to closely tailor regulatory requirements to risk. The Proposal does not provide sufficient evidence that this level of reporting burden is warranted based on the risk to the U.S. financial system posed by the U.S. operations of FBOs. As is largely the case currently, daily FR 2052a reporting should apply only to the most systemically important institutions, and the additional technology and operations build should not be imposed on an increased number of FBOs.

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The proposal represents an important step forward in establishing a framework that would determine the applicability and stringency of EPS rules and TD appreciates the effort that went into its development. For the most part we support the proposal and believe it has the potential to provide a workable methodology for assessing risk and tailoring EPS rules, but it is also evident that due to the inclusion of CUSO metrics and the wSTWF RBI's lack of risk sensitivity, the current proposal significantly overstates IHC liquidity risk. We hope that any final rule on risk-based tailoring for FBOs will address the concerns we have raised, in particular, by ensuring 1) liquidity standards are applied to IHCs based on an accurate assessment of IHC risk, 2) the wSTWF metric appropriately differentiate between stable forms of funding like insured brokered sweep deposits sourced by an affiliate, and less stable forms of funding,

[35] 12 C.F.R. § 225.8(e)(2)(i)(A).

3) greater flexibility be provided to Category III firms around stress testing requirements, and 4) daily 2052(a) reporting is limited to firms that pose the most significant liquidity risk (i.e. Category I firms).

Thank you very much for the opportunity to provide our comments on the Proposal. Please feel free to contact Philip Aquilino, Head of U.S. Regulatory Relations and Government Affairs, at (856) 470-2270 (or via email at Philip.Aquilino@td.com), if you have any questions or comments.

Very truly yours,

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