synchrony FINANCIAL

January 16, 2024

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

James P. Sheesley
Assistant Executive Secretary
Attention: Comments/Legal OES (RIN 3064-AF29)
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

Re: Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity (OCC Docket ID OCC-2023-0008; Federal Reserve Docket No. R-1813, RIN 7100-AG64; FDIC RIN 3064-AF29)

Dear Sirs and Madams:

Synchrony Financial ("Synchrony") is writing to recommend changes to the federal banking agencies' proposal to revise the capital regulations that apply to large banking organizations (the "Proposal")[1] to ensure that the agencies' capital rules are appropriately tailored and risk sensitive and do not cause an unwarranted constriction in retail credit.

Synchrony is a premier consumer financial services company and a leading provider of credit to consumers in the United States. Our offerings include private label, dual, co-brand and general purpose credit cards, as well as short- and long-term installment loans and consumer banking products. With approximately $112.9 billion in total consolidated assets as of September 30, 2023, Synchrony is among the smallest institutions that would be subject to the Proposal's sweeping changes to the regulatory capital framework.

Given Synchrony's size and business model, we have concerns that the Proposal would unnecessarily increase capital requirements for Category IV institutions in general, and for retail lending activities in particular. If the Proposal is finalized substantially as proposed, the excessively high capital requirements it would impose for consumer lending, and its inappropriately narrow criteria for consumer loans to receive lower risk weights, could lead to a contraction in available credit and other harms to consumers. For example:

- The Proposal would generally increase capital requirements for consumer lending activities by requiring more deductions from capital for certain deferred tax assets that

[1] Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity, 88 Fed. Reg. 64,028 (Sept. 18, 2023).

consumer lenders recognize in significant amounts in the ordinary course. As such, the Proposal would disincentivize banks subject to its lower deduction thresholds, including Category IV institutions, from providing consumer credit during times of stress, when their capital ratios may be under pressure.

- The Proposal would increase capital requirements for the undrawn portion of credit card loans, which would incentivize banks to reduce spending limits and thereby lead to lower credit scores, as all else being equal, a consumer that spends the same amount with a reduced spending limit would receive a lower credit score.

- The Proposal's framework for defaulted exposures would penalize banks for offering relief when a customer experiences temporary financial hardship. In turn, this approach could lead to more defaults, harm consumer credit scores, and make it harder for consumers to obtain access to future credit at affordable rates.

These are especially concerning outcomes for a Category IV institution like Synchrony that is engaged in a straightforward consumer lending business that does not pose systemic risk – and an inappropriate outcome in light of Congress's requirement that the Federal Reserve tailor enhanced prudential standards on the basis of capital structure, riskiness, complexity, financial activities, size, and any other risk-related factors. The agencies also should consider the cumulative effects of these potential harms to consumers together with other proposed changes to the regulatory framework for consumer credit, including the CFPB's late fee proposal, which, like the Proposal, would make it more expensive to provide credit card loans and other forms of retail credit.

This letter offers several recommendations to avoid these harmful outcomes for consumers. Part I of this letter discusses our recommendations to alter the Proposal's calculation of capital, which the agencies could limit to Category IV institutions as a way to tailor the Proposal. Most significantly, we strongly oppose the proposed reduction of the threshold for deducing deferred tax assets arising from temporary differences that an institution could not realize through net operating loss carrybacks ("temporary difference DTAs") from a Category IV institution's capital, as this threshold should, if anything, be *increased*. Part II describes our recommended changes to the expanded risk-based approach's treatment of retail exposures. Finally, part III sets forth our recommended revisions to the Proposal's calculation of operational risk.

I. Calculation of Capital

As a threshold matter, we strongly agree with commenters that have argued that Category IV institutions without significant trading activities should not be subject to ***any*** of the Proposal's changes to the capital framework, including the requirements for Category IV banking organizations to change the method of calculating capital, calculate risk-weighted assets under the expanded risk-based approach and become subject to the countercyclical capital buffer and the supplementary leverage ratio. The Proposal's lack of differentiation among banking organizations with $100 billion or more in total consolidated assets creates serious concern that the agencies are not heeding Congress's mandate to tailor enhanced prudential standards to the size and complexity of institutions above this threshold.

If, however, the agencies choose to address this issue by excluding Category IV banking organizations from some of the Proposal's most prescriptive requirements rather than all of them, we urge the agencies to do so by preserving for Category IV institutions the 25 percent threshold for the deduction of temporary difference DTAs that applies under the existing capital rules. In other words, to provide at least a modicum of the tailoring that applicable law requires, the agencies should not subject Category IV institutions to the more rigid 10 percent deduction threshold that applies to the largest and most complex banking organizations. If anything, the agencies should *increase* the existing 25 percent deduction threshold for Category IV (and smaller) institutions.

If the agencies do not increase or maintain the 25 percent deduction threshold for Category IV institutions, the agencies should at least allow an exception to a lower deduction threshold for a special subset of temporary difference DTAs known as "Allowance for Credit Losses" or "ACL" DTAs, which have significantly increased since the agencies originally calibrated the deduction threshold as a result of changes to accounting standards.[2] And if the agencies nevertheless persist in decreasing the 25 percent deduction threshold for Category IV institutions, they should also provide transitional relief for phasing in the lower deduction threshold.

In addition to adopting our recommendations regarding the deduction threshold, the agencies should allow for banks in their stress tests to assume that a two-year Federal net operating loss ("NOL") carryback will be available to offset temporary difference DTAs.

Below we provide background on temporary difference DTAs and discuss the reasons the agencies should adopt the recommendations described above.

A. Background on Temporary Difference DTAs and Their Regulatory Capital Treatment

Temporary difference DTAs arise when there are differences regarding the timing of when a bank recognizes an expense or loss for accounting purposes when it recognizes the expense or loss for tax purposes, and the difference will be recognized or eliminated over time. There are different types of temporary difference DTAs, but one major source of temporary difference DTAs for financial institutions that do a significant amount of consumer lending is the allowance for credit losses, which has generally grown under the recent CECL accounting standard. These temporary difference DTAs are known as "ACL DTAs." Banks that make credit card loans recognize especially high levels of ACL DTAs, because these loans have no defined maturity and are unsecured.[3]

U.S. Generally Accepted Accounting Principles ("GAAP") only allows the recognition of a temporary difference DTA if the DTA is "more-likely-than-not" to be realizable. Specifically, ASC 740 requires that in each reported period, a bank evaluate all positive and negative evidence, including the prospect of future taxable income, and charge off to equity via a valuation

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[2] Provision for credit losses is the expense related to maintaining the allowance for credit losses at an appropriate level to absorb the expected credit losses for the life of the loan balance.

[3] Another source of temporary difference DTAs is unrealized losses on available-for-sale debt securities.

allowance any DTAs that are *not* "more-likely-than-not" to be realized. An institution's temporary difference DTA on its balance sheet, both in base case and in stress scenarios, reflects this GAAP assessment and conclusion that the DTA is already "more-likely-than-not" realizable and is valuable.

Under the existing regulatory capital rules, a non-advanced approaches institution must deduct from its common equity Tier 1 capital the amount of temporary difference DTAs that exceeds 25 percent of the sum of the institution's common equity Tier 1 capital elements. The amount of temporary difference DTAs that is not deducted from the institution's capital is included in the institution's risk-weighted assets, with a 250 percent risk weight. Advanced approaches institutions are subject to similar requirements, but with a much lower deduction threshold of 10 percent.

B. Reasons Why Temporary Difference DTAs Should Not Be Deducted from Capital or, At the Very Least, the 25 Percent Threshold Deduction Threshold Should Be Maintained

The 25 percent deduction threshold that currently applies to non-advanced approaches banking organizations is already too conservative, and if anything, the agencies should raise – not lower – that threshold. This is the case for several reasons.

1. The 25 Percent Threshold Was Calibrated Prior to CECL

First, the agencies set the 25 percent deduction threshold for non-advanced approaches banking organizations and the 10 percent deduction threshold for advanced approaches banking organizations several years before events significantly increased the amount of temporary difference DTAs that banks have been forced to recognize. Most notably, as a result of the adoption of the CECL accounting framework, banking organizations have higher allowances for credit losses. Higher allowances for credit losses, in turn, increase temporary difference DTAs.[4]

Thus, due to changes in accounting standards, banking organizations currently have significantly higher DTAs than when the agencies calibrated the deduction thresholds in the existing capital rules. As a consequence, the deduction thresholds are far more binding in today's world than we believe the agencies ever intended.

2. Temporary Difference DTAs are Highly Realizable

Second, the existing capital rules require banking organizations to deduct temporary difference DTAs exceeding the relevant threshold from their capital based on a false premise: that banks are unlikely to be able to realize temporary difference DTAs. The agencies have stated:

[4] Unrealized losses on available-for-sale debt securities also increase temporary difference DTAs. The current macroeconomic environment has led to significant unrealized losses, and therefore, many banks have had a significant increase in the amount of temporary difference DTAs.

> Temporary difference DTAs are assets from which banking organizations may not be able to realize value, especially under adverse financial conditions. A banking organization's ability to realize its temporary difference DTAs is dependent on future taxable income; thus, the revised deduction threshold, together with a 250 percent risk weight for non-deducted temporary difference DTAs, will continue to protect banking organization capital against the possibility that the banking organization would need to establish or increase valuation allowances for DTAs during periods of financial stress.[5]

Importantly, however, banks ***are*** able to realize temporary difference DTAs over time, and often on an immediate basis during periods of stress as well. As the agencies have recognized, a bank will realize ACL DTAs over time by recognizing interest and fees (and the resulting taxable income) on the loans, including when borrowers repay their loans, which most borrowers do. Moreover, the capital rules are largely premised upon banking organizations as going concerns, not failed entities,[6] and therefore the agencies' concern that future taxable income would not exist against which DTAs could be used or realized should not be a driving consideration, particularly with respect to DTAs arising from timing differences.

In addition, DTAs on an institution's balance sheet are already subject to a "more-likely-than-not" to be realized valuation standard under U.S. GAAP. Experience has shown that valuation allowances have been established with appropriate conservatism such that DTAs are valuable assets that should be capable of being included in regulatory capital. We submit that further limiting the recognition of DTAs in regulatory capital is unwarranted and overly punitive.

A bank can also realize temporary difference DTAs on an immediate basis by offsetting them with the amount of taxes previously paid that an institution can recover through NOL carrybacks.[7] The U.S. Congress generally eliminated NOL carrybacks in 2017.[8] But Congress frequently reinstates NOL carrybacks during stress scenarios in order to stimulate the economy, avoid a reduction in the banking sector's ability to provide credit to consumers, and thus stave off a recession. Congress has consistently done so during economic downturns, even in times of divided government. Examples include the following:

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5 84 Fed Reg. 35,234, 35,239 (July 22, 2019).

6 82 Fed. Reg. 8,266, 8,267 (Jan. 24, 2017) (Federal Reserve stating that "regulatory capital requirements are intended to ensure that a banking organization has sufficient capital to remain a going concern"); Basel Committee on Banking Supervision, Basel III Definition of Capital, Definition of Eligible Capital, available at https://www.bis.org/basel_framework/chapter/CAP/10.htm?inforce=20191215&published=20200605 (June 5, 2020) (describing Tier 1 capital – the dominant form of capital and the type of capital from which temporary difference DTAs are applied – as "going-concern" capital).

7 When temporary difference DTAs can be realized through NOL carrybacks, the capital rules do not require such DTAs to be deducted from capital.

8 See Tax Cuts and Jobs Act, Pub. L. No. 115-97 (Dec. 22, 2017).

- **The COVID-19 pandemic.** In response to the COVID-19 pandemic, Congress enacted the CARES Act, which, among other things, allowed firms to carry back losses in tax years covering 2018, 2019, and 2020 for up to five years and provided that NOL carrybacks could offset 100 percent of taxable income (*i.e.*, rather than 80 percent).[9]

- **The 2008-09 financial crisis.** In 2009, Congress created a temporary extension to the NOL carryback rule. This extension allowed taxpayers to elect to carry back certain losses occurring in 2008 and 2009 for three, four, or five years, rather than the two-year period that generally applied at the time.[10]

- **The 2001 Dot-com crash and 9/11.** Similarly, in 2002, in response to recessionary conditions, Congress extended the NOL carryback period to five years.[11]

And importantly, as described above, accounting rules only allow the recognition of a temporary difference DTA in the first place if the DTA is "more-likely-than-not" to be realizable.

Thus, temporary difference DTAs – especially ACL DTAs – are highly realizable, including in times of stress.

3. Deductions of Temporary Difference DTAs Have Pro-Cyclical Effects

Third, the requirement to deduct additional temporary difference DTAs from capital would have unnecessarily pro-cyclical impacts on institutions' capital, which could lead institutions subject to these additional deductions to scale back their lending to avoid threatening their safety and soundness. These impacts are particularly large for banking organizations with significant consumer financing and credit card businesses, and the capital strain caused by the proposed changes could reduce their ability to provide credit, especially during periods of stress.

Temporary difference DTAs typically increase when a banking organization realizes significant loan loss provision expenses, which can occur during stressed conditions. Those conditions that result in significant increase in loan loss reserves also may create stress on capital levels. Due to the unduly restrictive deduction thresholds, downward pressure on capital at the same time that temporary difference DTAs are increasing would reduce the amount of such DTAs that can be included in capital. This procyclicality arises not only in an actual downturn, but as a practical matter impacts capital levels at institutions during normal economic times through application of stress scenarios in the Federal Reserve's stress testing and capital planning processes.

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9 *See* CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020).

10 *See* Worker, Homeownership, and Business Assistance Act of 2009, P.L. 111-92 (Nov. 6, 2009).

11 *See* Job Creation and Worker Assistance Act of 2002, Pub. L. 107-147 (Mar. 9, 2002).

For the foregoing reasons, when finalizing the Proposal the Agencies should make the following changes to the framework for calculating capital:

- Increase or at least maintain the 25 percent deduction threshold that applies to Category IV institutions – or, at the very least, allow an exception for ACL DTAs and provide a transition period for any lower deduction threshold for other temporary difference DTAs; and

- Allow for banks in their stress tests to assume that a NOL carryback will be available to offset temporary difference DTAs, as it has been in every significant economic downturn of the last 20 years.

II. Retail Exposures

Several features of the Proposals would increase the capital requirements associated with retail credit. These aspects of the Proposal could lead to a contraction in credit available to consumers and a decline in consumer credit scores.

A. Credit Conversion Factors for Unconditionally Cancellable Commitments

Under the Proposal's expanded risk-based approach, unconditionally cancellable commitments would receive a 10 percent credit conversion factor ("CCF") as opposed to the 0 percent CCF that applies under the standardized approach in the existing capital rules.

The final rule should adopt a CCF of 0 percent within the expanded risk-based approach, if not for all lending commitments that are unconditionally cancellable, then at least for retail lending commitments that are unconditionally cancellable. Such a change to the Proposal would be warranted for several reasons.

First, the proposed 0 percent CCF would harm consumers. A 0 percent CCF would incentivize banking organizations to reduce consumers' spending limits on credit cards and other retail lines of credit in order to reduce risk-weighted assets attributable to unused portions of credit lines. All else being equal, reduced credit limits negatively impact a consumer's credit score. This is because under standard credit scoring systems like FICO, a greater rate of utilization – that is, a higher proportion of the amount of a credit line that a consumer uses relative to the total available amount of the credit line – decreases the consumer's credit score. And while the 0 percent CCF would incentivize banks to reduce the amount of consumers' credit lines, there is no reason to think the 0 percent CCF would affect consumers' actual levels of spending. Thus, the 0 percent CCF would likely lead to increased utilization rates and thereby lead to lower credit scores. Moreover, if a borrower experiences a reduction in his or her credit score, a banking organization that lends to that borrower will need to recognize the lower score in its risk models, which could cause further negative effects for the banking organization and the borrower, including by creating a disincentive for the banking organization and other lenders to extend additional credit to the borrower.

Second, the agencies' reasoning for proposing the 10 percent CCF does not support applying the CCF to retail loans. The agencies proposed the 0 percent CCF because "in practice, banking organizations often extend credit or provide funding for reputational reasons or to support the viability of borrowers to which the banking organization has significant ongoing exposure, even when borrowers are under economic stress. For example, banking organizations may have incentives to preserve substantial or core customer relationships when there is a deterioration in creditworthiness that may, for less substantial customer relationships, cause the banking organization to cancel a commitment."[12]

Whatever force this reasoning may have with regard to unconditionally cancellable *corporate loans*, where each customer relationship could be significant to the bank's bottom line, it has much less relevance to *retail loans*, where no one customer is significant to the bank and customer relationships are less personal. Synchrony, for instance, has more than 70 million active account holders, and many have modest rates of spending. Banks can – and sometimes do – reduce or cancel retail lines of credit as a prudent risk management tool without suffering long-term reputational reasons or customer relationship issues.

Third, we are not aware of any banks that have suffered material losses as a result of a failure to exercise their right to cancel unconditionally cancellable commitments, despite the fact that the capital rules have, for many years, assigned a 0 percent CCF to these commitments. As such, the increase in CCF from 0 percent to 10 percent appears to be a solution in search of a problem.

B. Scope of Regulatory Retail Exposures

Under the proposed expanded risk-based approach, regulatory retail exposures would be eligible for a lower risk weight compared to other retail exposures. A regulatory retail exposure would be defined as a retail exposure that meets three criteria: (1) a product criterion, (2) an aggregate limit specifying that the bank's exposure to the obligor and its affiliates cannot exceed $1 million, and (3) a granularity limit specifying that the bank's exposure to the obligor can only count as a regulatory retail exposure for the portion of the exposure that does not exceed 0.2 percent of all regulatory retail exposures.

The final rule should eliminate the aggregate limit and granularity limit for credit card exposures to reduce administrative burdens that do not have any corresponding safety and soundness benefit. The application of these limits would require firms to aggregate credit exposures to each obligor and his or her affiliates, which is a exercise that banks are not currently equipped to conduct and would require costly changes to internal systems. For a typical bank that would be subject to the expanded risk-based approach – *i.e.*, a bank that has more than $100 billion in assets – any individual credit card accountholder would be extremely unlikely to breach the aggregate limit and granularity limit in any material respect. Moreover, the $1 million aggregate limit appears to have been selected arbitrarily. Thus, the utility of applying the aggregate limit and granularity limit to credit card exposures would be questionable at best.

C. Transactor Exposures

Under the proposed expanded risk-based approach, a transactor exposure would be eligible for a lower risk weight compared to other regulatory retail exposures. A transactor

[12] 88 Fed. Reg. at 64,056.

exposure would be defined as a regulatory retail exposure that is a credit facility where the balance has been repaid in full at each scheduled repayment date for the previous 12 months or an overdraft facility where there has been no drawdown over the previous 12 months.

The agencies should make three changes or clarifications to the transactor exposure definition to avoid unintended negative consequences for consumers.

First, the final rule's definition of transactor exposure should have a shorter look-back period of 6 months rather than 12 months. A six-month lookback period is sufficient to capture consumers who generally repay their balances in full and present a lower credit risk. The use of 6 months rather than 12 also lessens the capital impact to the banking organization if the borrower forgets to make a payment or overdraws his or her account in a single month – neither of which may be indicative of a significant credit risk. Alternatively, the agencies could account for these scenarios by allowing an exposure to be a transactor exposure if the borrower has paid in full at all but a single scheduled repayment date during the lookback period.

Second, the agencies should revise the proposed definition of transactor exposure to clarify that an exposure still qualifies as a transactor exposure when an obligor carries a balance but was not required to make a full payment under the terms of a promotional offer. Banks often run promotions for some types of retail products that may qualify as transactor exposures. During a promotional period, full repayment may not be required, and often times no interest will accrue on the balance. While these promotions benefit consumers, they result in consumers carrying a balance and not repaying the balance in full during the promotional period. While we do not believe the agencies intended to disqualify these products from the definition of transactor exposure, the agencies should clarify that the phrase "scheduled repayment date" in the definition excludes a date on which no payment is required.

Third, and similarly, the agencies should clarify that an exposure still qualifies as a transactor exposure when the obligor has not used the credit facility, and thus there is no balance to have been "repaid in full."

D. Defaulted Exposures

The Proposal would expand the definition of defaulted exposures for retail exposures to include, among other things, any distressed restructuring until the bank has a reasonable assurance of repayment and performance as demonstrated by a sustained period of repayment performance. A distressed restructured loan would include postponement of principal, interest or fees and extension of the term of the loan. Defaulted exposures would receive a 150 percent risk weight, which is significantly higher than the 55 percent, 85 percent, or 110 percent risk weights that would apply to non-defaulted retail exposures.

The assignment of a 150 percent risk weight would disincentivize banks from offering relief when a customer experiences temporary financial hardship, which could lead to a true default (i.e., non-repayment), harming the customer's credit score and potentially preventing the customer from obtaining access to future credit at affordable rates. This outcome is not necessary in order to capture loan defaults within the definition of defaulted exposure, as the definition already contains other ways that a retail exposure can become defaulted, including that the loan is 90 day s past due or in accrual status. The agencies should strike the third prong of the definition of defaulted exposures for retail exposures to avoid these perverse outcomes and to give banks the flexibility to work with customers who can repay a restructured loan without incurring a regulatory capital penalty.

III. Operational Risk

The proposed framework for operational risk within the expanded risk-based approach would significantly increase capital requirements for banking organizations subject to the framework, which would, for the first time, include Category III and IV institutions. The increase in capital due to the operational risk framework would have a negative impact on many different business lines, including, but not limited to, consumer lending. For instance, we estimate that the operational risk framework alone would increase Synchrony's risk-weighted assets by approximately $15 billion, an amount that far exceeds Synchrony's average annual operational risk losses of approximately $250 million for the last 10 years.

We agree with the many commenters and policymakers that have identified significant flaws in the Proposal's methodology for calculating operational risk, and we endorse the following ways to eliminate those issues in the final rule:

- **Permit offsetting of fees and commission income with fee and commission expenses in the services component of the Business Indicator Component ("BIC").** As proposed, the BIC of the operational risk framework would use revenues as a proxy for operational risk, a method that has, at best, a crude relationship to actual operational risk incurred. We are particularly concerned with the proposed method of calculating the services component of the BIC with no netting of fee and commission expenses from fee and commission revenues. The lack of offsetting would negatively impact credit card lending businesses because the amount of credit card fees received could not be offset by related expenses paid, such as credit card member rewards. There is no conceptual reason to disallow such offsetting in the services component when it is allowed in the interest, lease, and dividend component and the financial component. This inconsistency creates anomalous results, including that some revenues from a single product such as a credit card (interest received) are offset by related expenses (interest expense) while others revenues from the same product (credit card fees received) are not offset by related expenses (credit card member rewards or network fees paid), even though the product generating the two flows is the same. The agencies should address this flaw by permitting fee and commission income to be offset by fee and commission expenses in the services component.

- **Introduce a cap for the services component.** Similarly, the services component of the BIC should include a cap akin to the 2.25 percent cap of interest-earning assets that applies under the interest, lease, and dividend component. Such a cap would create consistency in the operational risk framework by treating profitable fee-generating business lines no differently from other income-generating businesses.

- **Set the internal loss multiplier ("ILM") to one, rather than flooring it at one.** In a departure from the internationally-agreed Basel Committee standard, the Proposal would floor the ILM at one. Flooring the ILM at one would allow unfavorable historical experiences to increase a banking organization's operational risk charge but would not allow favorable historical experiences to decrease it. We also have significant doubts regarding the agencies' assertion that historical losses are predictive of future operational risk, as the agencies have not presented evidence to this effect. To address this issue, the agencies should set forth a simplified ILM that is set to one, which would align the U.S. rules with the approaches taken in other jurisdictions such as the UK. At a minimum, the agencies should reduce the proposed 10-year lookback period for the data on which the ILM is based, as the 10-year period would penalize a bank many years after it may have made changes to its business model or practices to reduce its operational risk profile.

- **If the ILM is not set to one, adjust the calculation of the ILM to reflect amounts recovered from third parties through contractual loss-sharing arrangements such as Retailer Share Arrangements ("RSAs").** As proposed, the ILM would be based on a measure of historical net operational losses that would not recognize amounts of operational losses that a banking organization has recovered from third parties through contractual loss-sharing arrangements such as RSAs. As a private label credit card issuer, Synchrony enters into RSAs with its retailer partners in order to mitigate its fraud losses. Synchrony's retailer partners absorb a portion of Synchrony's fraud losses through payments under RSAs, and these payments thereby reduce Synchrony's operational losses and operational risk. The proposed ILM's failure to recognize these types of loss recoveries would artificially inflate a banking organization's operational risk. Thus, the final rule should, at the very least, allow a banking organization to reduce the amount of its net operational losses for purposes of calculating the ILM by the amount of losses that the banking organization has recovered through third party contractual arrangements such as RSAs.

- **Set a higher materiality threshold for the collection of information regarding operational risk loss events.** The Proposal would require banks to gather descriptive information regarding the drivers of operational risk loss events with a net impact of at least $20,000. This requirement would pose a substantial operational burden on banking organizations without a corresponding benefit. Operational loss events with an impact of $20,000 are largely immaterial to banks that are large enough to be subject to the expanded risk-based approach. The agencies should thus set a higher threshold in the final rule.

- **Avoid the double-counting of operational risk in the expanded risk-based approach and stress capital buffer ("SCB").** Large banking organizations already capitalize operational risk through the inclusion of operational risk losses in the SCB. To avoid an overcapitalization of operational risk, the Federal Reserve should exclude operational risk losses from the SCB if the SCB is added to the expanded risk-based approach, or the agencies should remove operational risk losses in the stress tests from the BIC.

- **Index the relevant thresholds for inflation.** Under the Proposal, the BIC thresholds of $1 billion and $30 billion and the ILM's de minimis threshold of $20,000 would be static. In the current macroeconomic environment, the lack of indexing for inflation could cause banking organizations' capital requirements to increase perceptibly in only a few years, even if their actual risk profiles do not increase. The final rule should index these thresholds for inflation to avoid this problem.

IV. Conclusion

In sum, if the agencies finalize the Proposal substantially as proposed, without making the changes described above:

- Credit cards would become more expensive for banks to provide to consumers. The higher cost of capital that would be required for a bank to offer these products – stemming from the Proposal's higher deductions of ACL DTAs, and its increased capital requirements for unconditionally cancelable commitments, retail exposures that a bank has restructured, and operational risk – would create perverse incentives. Banks may be forced to react by scaling back the amount of credit they provide consumers, reducing consumers' credit lines, and/or foregoing troubled debt restructurings for consumers in distress.

- Banks would incur higher operating costs to comply with burdensome features of the expanded risk-based approach that have no corresponding real-world benefit of improving risk sensitivity.

- Due to these costs and burdens, risk may migrate from the regulated banking system to non-regulated firms, and/or to banking organizations that are subject to less intensive regulation and supervision than banking organizations with $100 billion or more in assets. In turn, such market shifts could put borrowers and the entire financial system at greater risk.

We therefore urge the agencies to make the changes we have described throughout this letter to improve risk sensitivity, avoid harm to consumers, and promote a financial system in which banks with $100 billion or more in assets can continue to provide retail credit in a safe and sound manner.

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We thank the agencies for considering the recommendations set forth in this letter. If you have any questions, please contact Karl Kaufmann, Senior Vice President, Chief Banking & Regulatory Counsel, at karl.kaufmann@syf.com.

Respectfully Submitted,

[redacted]

Brian Wenzel
EVP & Chief Financial Officer
Synchrony Financial