March 22, 2016

Via Electronic Delivery

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th E Street, SW, Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219
Docket ID FFIEC-2014-0001

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551
Docket No. R-1510

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

Re: Regulatory Publication and Review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996

The undersigned banking organizations appreciate the opportunity to provide comments to the Board of Governors of the Federal Reserve System (the "Federal Reserve"), the Office of the Comptroller of the Currency (the "OCC") and the Federal Deposit Insurance Corporation (the "FDIC", and collectively with the Federal Reserve and the OCC, the "Agencies") in response to the Agencies' notice of regulatory review and request for comments on the Regulatory Publication and Review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA"). EGRPRA generally requires the Agencies to periodically review existing regulations in order to identify "outdated or otherwise unnecessary" regulatory requirements.[1] On December 23, 2015, the Agencies published the fourth and final installment of the 2015 EGRPRA notices, soliciting comment on, among other regulations, the regulatory capital and liquidity rules.[2]

For the reasons discussed below, we believe the Agencies should review and appropriately revise the thresholds for mandatory application of certain regulatory requirements to banking organizations that are solely based on whether a banking organization has $250 billion or more

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[1] 12 U.S.C. § 3311(a).

[2] *Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996*, 80 Fed. Reg. 79,724 (Dec. 23, 2015).

in total consolidated assets or $10 billion or more in on-balance sheet foreign exposure (the "Thresholds"). Two key examples of the use of the Thresholds for mandatory application of regulatory standards are the Agencies' Advanced Approaches Risk-Based Capital Rules (the "Advanced Approaches")[3] and the Liquidity Coverage Ratio: Liquidity Risk Measurement Standards (the "Full LCR").[4] We note that the Thresholds are increasingly being used in other contexts, such as the Federal Reserve's annual Comprehensive Capital Assessment and Review ("CCAR")[5] exercise, the Agencies' recently-released Interagency Guidance on Funds Transfer Pricing Related to Funding and Contingent Liquidity Risks and the Federal Reserve's recent re-proposal of rules to implement the single-counterparty concentration limit under section 165(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[6] As discussed in more detail below, the Thresholds are outdated, static, and not risk sensitive, imposing unnecessary regulatory requirements on institutions solely because they have crossed one or both of the arbitrary cutlines and resulting in incongruent groupings of banking organizations that are not aligned with business models or actual risks.[7] The data included below clearly illustrate the wide gulf between the largest and most complex banking organizations and regional and other traditional banking organizations captured by the Thresholds.

Through the application of the Thresholds, regional and other traditional banking organizations ("Covered Traditional Banking Organizations") are subject to many of the same regulatory requirements—such as the Advanced Approaches and the Full LCR, for example—as the largest and most complex global banking organizations (i.e., banking organizations identified as global systemically important banks ("G-SIBs")). However, vast differences exist between the firm-specific business models and systemic risk profiles of Covered Traditional Banking Organizations and the G-SIBs. As a result of the Thresholds not taking into account these differences, regulatory requirements are not being appropriately calibrated to the risk profile of institutions and unnecessary regulatory obligations and supervisory expectations are being imposed on Covered Traditional Banking Organizations.

As discussed further below, we respectfully request that the Agencies re-evaluate the use of the Thresholds and adjust the requirements for mandatory application of regulatory standards based on the Thresholds, including the Advanced Approaches and the Full LCR. We believe an appropriate alternative approach would be to replace the Thresholds with a more sophisticated,

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[3] 12 CFR Part 3, Subpart E; 12 CFR Part 217, Subpart E; 12 CFR Part 324, Subpart E.

[4] 12 CFR Part 50; 12 CFR Part 249; 12 CFR Part 329. Implementation of the LCR in the United States comprises two sets of rules. One set jointly implemented by the Agencies established an LCR requirement, the "Full LCR", for banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposure as well as any subsidiary depository institution with total assets of $10 billion or more of such organizations. The Federal Reserve also established a modified LCR that applies to banking organizations that have at least $50 billion in total consolidated assets but are not covered by the Full LCR.

[5] *See* SR 15-18, *Federal Reserve Supervisory Assessment of Capital Planning and Positions for LISCC Firms and Large and Complex Firms*, SR 15-19, *Federal Reserve Supervisory Assessment of Capital Planning and Positions for Large and Noncomplex Firms* (Dec. 21, 2015).

[6] *Single-Counterparty Credit Limits for Large Banking Organizations*, 81 Fed. Reg. 14,328 (Mar. 16, 2016).

[7] As discussed further below, the Agencies increasingly are using the Thresholds to set the scope of heightened regulations and supervisory expectations.

dynamic measure—such as the systemic indicator approach used to identify G-SIBs—that would ensure that the scope of application remains properly calibrated.

1. The Thresholds are Static, Outdated and Miscalibrated

The Basel Committee on Banking Supervision (the "Basel Committee") develops supervisory standards and guidelines for "internationally active" banking organizations.[8] The Agencies participate in the development of those international standards, which have no legal force in the United States until regulations to implement the standards are adopted through the U.S. rulemaking process. It remains with the Agencies, therefore, to determine the appropriate scope of institutions to which standards developed for "internationally active" banking organizations should apply.

The Thresholds, which are unique to the United States, were originally established by the Agencies in 2003 to identify those banking organizations to which the Advanced Approaches, based on the advanced internal ratings-based approach for credit risk and the advanced measurement approaches for operational risk under the Basel Committee's Basel II framework,[9] would apply on a mandatory basis.[10] At that time, the Federal Reserve made clear that the implementation in the United States of standards for internationally active banking organizations was intended to reach only the "largest, most complex banks," i.e., those that were the "most complex banking institutions" and were truly "internationally active."[11]

Today, however, the Thresholds capture certain regional and other traditional banking organizations that, due to their business models and limited risk profiles, do not warrant application of the same rules that apply to G-SIBs, such as the Full LCR and the Advanced Approaches. As a result of the Thresholds, numerous regulatory requirements, and in particular heightened requirements, such as the Advanced Approaches or the Full LCR, apply to incongruent groupings of banking organizations that are not aligned with banking organizations' business models or actual risks.

This has occurred because the Thresholds are static, do not appropriately reflect complexity, business models or actual risk profiles, and are a blunt way of measuring international activity. Nonetheless, the Agencies continue to use the Thresholds as the cutline for implementing a broad variety of regulatory requirements in addition to the Advanced Approaches and the Full LCR, including the supplementary leverage ratio, the requirement under the regulatory capital rules to take into account accumulated other comprehensive income, the countercyclical capital

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[8] *See History of the Basel Committee*, http://www.bis.org/bcbs/history.htm (Oct. 1, 2015).

[9] Basel Committee, *International Convergence of Capital Measurement and Capital Standards, A Revised Framework Comprehensive Version* (June 2006).

[10] *Risk-Based Capital Guidelines; Implementation of New Basel Capital Accord*, 68 Fed. Reg. 45,900 (Aug. 4, 2003).

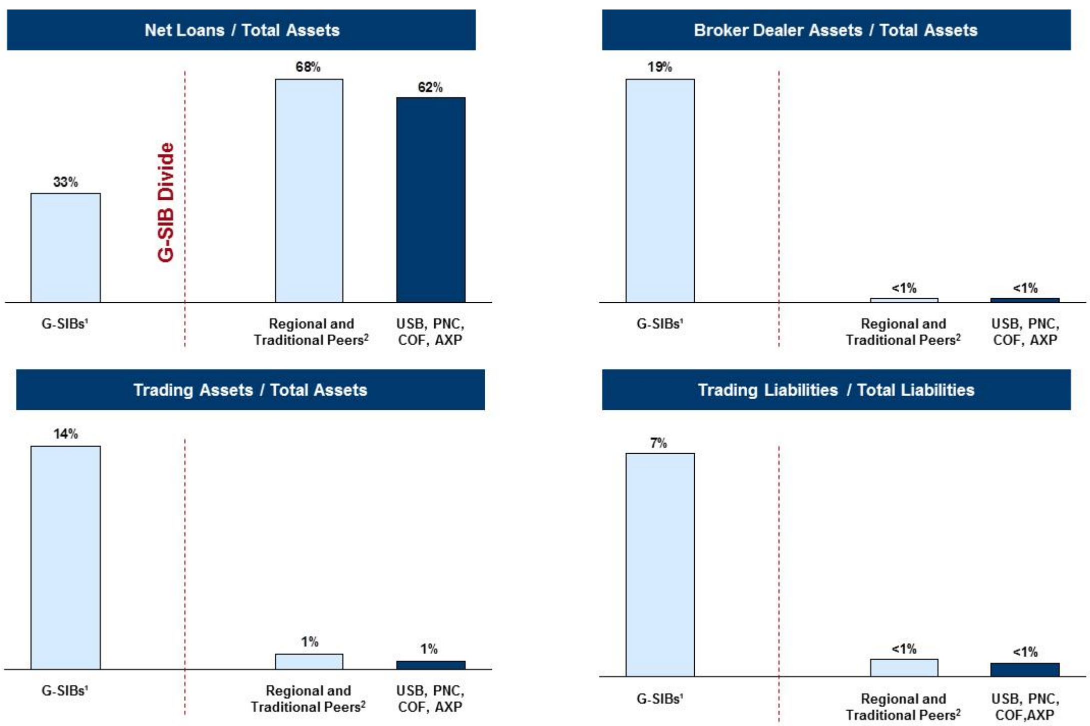
[11] *Testimony of Testimony of Vice Chairman Roger W. Ferguson, Jr., Basel II*, Before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, June 18, 2003, *available at* http://www.federalreserve.gov/boarddocs/testimony/2003/20030618/default.htm; *see also* Federal Reserve, *Capital Standards for Banks: The Evolving Basel Accord*, 89 Fed. Res. Bull. 395 (Sept. 2003).

buffer and heightened supervisory requirements for capital planning and stress testing.[12] Moreover, the Agencies have indicated that they expect to continue to use the Thresholds when adopting future Basel standards.[13]

The following data illustrate how reliance on the Thresholds results in incongruent groupings of banking organizations—especially in terms of business model and risk profile—based on, among other things, the bank-centric business models, limited capital markets activities and limited derivatives exposures of regional and other traditional banking organizations. For example:

- Relative to larger and more complex organizations (such as the U.S. G-SIBs), Covered Traditional Banking Organizations have relatively simple organizational structures, primarily focusing on traditional retail and commercial banking products and services, and have only limited trading and capital markets operations. Broker-dealers and other nonbank operations outside of service-providing affiliates comprise only a small portion of their overall operations. *See Figure 1*.

Figure 1



Source: Y9C and Call Report Data via SNL; Data as of most recent regulatory filings (2015Q3)
1) BAC, JPM, WFC, C, GS, MS, BK, STT
2) STI, FITB, RF, KEY, MTB, CMA, HBAN, ZION, CFG, DFS, BBT

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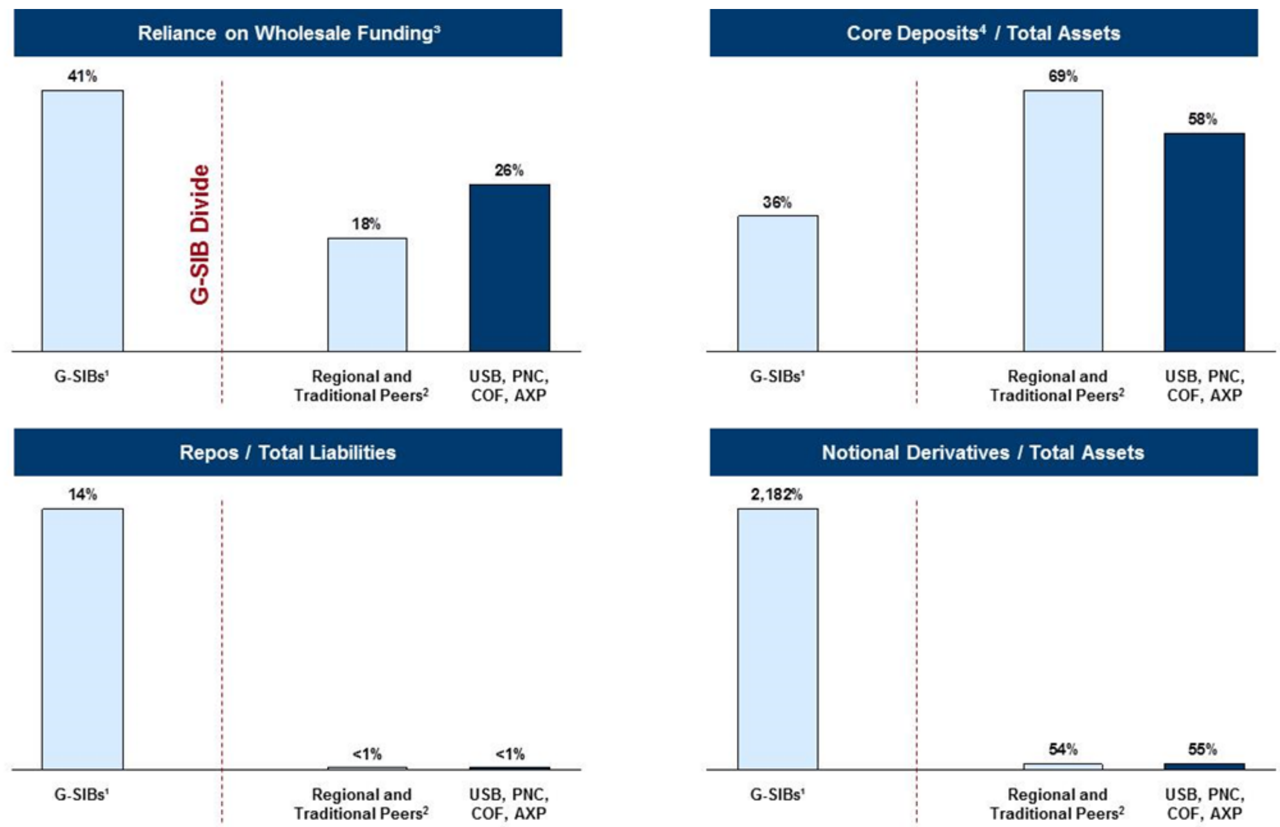
[12] Notably, only certain of the standards applied mandatorily by way of the Thresholds are based on standards developed by the Basel Committee for "internationally active" banking organizations.

[13] *See supra* note 20 and accompanying text.

- Covered Traditional Banking Organizations' exposure to capital markets and derivatives activities pale in comparison to that of U.S. G-SIBs. *See Figure 2*.

Figure 2



Source: Y9C and Call Report Data via SNL; Data as of most recent regulatory filings (2015Q3)
1) BAC, JPM, WFC, C, GS, MS, BK, STT
2) STI, FITB, RF, KEY, MTB, CMA, HBAN, ZION, CFG, BBT, DFS
3) Defined as Wholesale Funding (including Brokered CDs) / Funding Liabilities
4) Represents domestic deposits, excluding time deposits >$250K and brokered CDs

Accordingly, and as discussed further below, we believe the Thresholds should be revised in a manner that ensures appropriate calibration of regulatory requirements based on banking organizations' business models and actual risk profile. Notably, revisiting and revising the Thresholds, and their application to regional and other traditional banking organizations, would be consistent with recent Congressional direction included in the House Committee on Appropriation's report accompanying the 2016 Financial Services and General Government Appropriations Bill, which was incorporated into the 2016 Consolidated Appropriations Act enacted in December 2015, which provides:

> *Basel Standards.*—The Committee is concerned that the U.S. prudential regulators have inappropriately applied several standards developed by the Basel Committee on Bank[ing] Supervision (Basel), which are explicitly designed for only the most internationally active, globally systemic, and highly complex banking organizations to less complex organizations, like

regional banking organizations, which have only limited foreign exposure and do not pose a threat to the U.S. or global financial system. The Committee encourages Treasury and other prudential regulators to reexamine the impact of certain liquidity and capital standards as they apply to U.S. regional banks and other less complex organizations.[14]

2. More Sophisticated Methods Exist to Calibrate Regulatory Requirements

The international regulatory community and the Agencies have developed more sophisticated, dynamic tools that we believe should be leveraged to better calibrate regulatory requirements based on the actual risk profile of banking organizations. Specifically, the Agencies participated in the international development of the systemic indicator approach,[15] which the Federal Reserve has implemented in the United States for identifying G-SIBs.[16] The systemic indicator approach takes into account not only size, but also interconnectedness, substitutability, complexity, and cross-jurisdictional activity. Moreover, the systemic indicator approach is dynamic because the attributes that it takes into consideration, and the denominators that are used to evaluate those attributes, are updated periodically.[17]

A cursory review of the systemic indicator approach quickly demonstrates that it provides much more powerful insights into complexity, international activities and the actual risk profile of a banking organization than the rudimentary asset- and on-balance sheet foreign exposure-based measures incorporated into the Thresholds. The systemic indicator data also highlight the vast difference between Covered Traditional Banking Organizations and the largest, most complex banking organizations (such as the U.S. G-SIBs), and why the current Thresholds—which subject Covered Traditional Banking Organizations to the same regulatory requirements and standards as the U.S. G-SIBs—are no longer appropriate. For example:

- As for size, the eight U.S. banking organizations identified as G-SIBs account for 76% of total exposures for all U.S. bank holding companies required to submit the Federal Reserve's FR Y-15 Banking Organization Systemic Risk Report ("FR Y-15 Filers"),[18] whereas the smallest non-custody G-SIB has total exposures of $1.28 trillion and the largest Covered Traditional Banking Organization has only $539 billion.

[14] H.R. Rep. No. 114-194 (2015), at 10.

[15] Basel Committee, *Global systemically important banks: updated assessment methodology and the higher loss absorbency requirement* (July 2013).

[16] *See Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Final Rule*, 80 Fed. Reg. 49,802 (Aug. 14, 2015).

[17] The Federal Reserve's FR Y-15 Banking Organization Systemic Risk Report, which collects data comprising the five components underlying the systemic indicator approach (size, interconnectedness, substitutability, complexity, and cross-jurisdictional activity), is submitted by bank holding companies with total consolidated assets of $50 billion or more on a quarterly basis. The aggregate systemic indicators used as the denominators to calculate a banking organization's systemic indicator score are updated on an annual basis.

[18] All FR Y-15 data in this letter are as of December 31, 2014.

- With respect to the amount of over-the-counter ("OTC") derivatives, an important measure of complexity, U.S. G-SIBs account for 98% of the notional value of all OTC derivatives for all FR Y-15 Filers, and the smallest non-custody G-SIB has OTC derivatives with a notional value of $5.6 trillion, compared to the largest Covered Traditional Banking Organization, which has only $278 billion. Similarly, U.S. G-SIBs account for 87% of trading and available-for-sale securities (less high quality liquid assets) for all FR Y-15 Filers, and the smallest non-custody G-SIB has $135 billion of such securities, compared to only $16 billion for the largest Covered Traditional Banking Organization.

- As for international activities, the U.S. G-SIBs account for 94% of all cross-jurisdictional claims and 95% of all cross-jurisdictional liabilities for FR Y-15 Filers, representing the vast majority of all international claims and liabilities for FR Y-15 Filers. No Covered Traditional Banking Organization has cross-jurisdictional claims or liabilities exceeding 1% of the aggregate amounts for FR Y-15 filers, consistent with the domestic focus and limited international activity of Covered Traditional Banking Organizations.

In addition to size, complexity and international activity, the remaining systemic indicators similarly demonstrate the vast gulf between U.S. G-SIBs and regional and traditional banking organizations. See *Appendix A* for a full summary of all systemic indicators for U.S. G-SIBs as compared to traditional and regional banking organizations. Perhaps as or more telling are the ultimate scores of systemic importance derived using the systemic indicator data. For example:

- Under the Federal Reserve's systemic indicator methodology, a U.S. bank holding company is deemed to be a G-SIB if its systemic indicator score is 130 or more. The G-SIB cutoff (130) is more than three times greater than the systemic indicator score of the largest non-custody U.S. banking organization that is not identified as a G-SIB (39); and

- The average systemic indicator score of the eight U.S. G-SIBs (280) is over seven times greater than that of the largest non-custody U.S. banking organization that is not G-SIB (39).[19]

The systemic indicators and score data make it clear that the U.S. G-SIBs are significantly more complex and internationally active than traditional and regional banking organizations. More specifically, we believe that such data represents that, whereas the U.S. G-SIBs would be considered "internationally active" under any reasonable standard, they similarly demonstrate that regional and traditional banking organizations, which engage predominately in domestic consumer and commercial lending and deposit gathering, would not. In light of the stark differences between U.S. G-SIBs and regional and traditional banking organizations, we believe

[19] Systemic indicator scores were calculated based on FR Y-15 reports as of December 31, 2014, and the Basel Committee's 2014 systemic indicator denominators (converted into U.S. Dollars based on the spot USD/EUR exchange rate prevailing on December 30, 2014). A report compiled by the Office of Financial Research ("OFR") draws similar conclusions using the Basel Committee's essentially identical methodology. *See* Allahrakha et al., Office of Financial Research Brief, *Systemic Importance Indicators for 33 U.S. Bank Holding Companies: An Overview of Recent Data* (Feb. 12, 2015), *available at* http://financialresearch.gov/briefs/files/2015-02-12-systemic-importance-indicators-for-us-bank-holding-companies.pdf.

that the systemic indicator approach should be applied more broadly, and instead of the Thresholds, in determining the scope of implementation for heightened regulatory requirements in the United States.

We believe it is especially critical for the Agencies to keep these very real differences between U.S. G-SIBs and regional and other traditional banking organizations in mind, particularly given the increasing use of the Thresholds outside the context of the Basel Committee's standards.

This reexamination is all the more timely and important given the expected future use of the Thresholds in implementing international standards in the United Stated, including for example in implementing the Basel Committee's recently proposed revisions to the standardized approach for determining credit risk[20] and the standardized approach for operational risk, as well as a potential international capital floor.

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We appreciate the opportunity to provide these comments to the Agencies under the auspices of the EGRPRA process. We appreciate that the Agencies take this process and their responsibilities to review their regulations seriously, and further appreciate the changes made through previous EGRPRA reviews in response to comments raised by the public. We would be glad to meet with the Agencies to discuss further these comments and our recommendations. Contact information for each of the signatory banking organizations is included in the Annex to this letter.

Sincerely,

American Express Company
Capital One Financial Corporation
The PNC Financial Services Group, Inc.
SunTrust Banks, Inc.

[20] *See* Banking Agencies' Statement Regarding the Basel Committee's Second Consultative Paper, "Revisions to the Standardized Approach for Credit Risk", http://www.federalreserve.gov/newsevents/press/bcreg/20151210b.htm (Federal Reserve); https://www.fdic.gov/news/news/press/2015/pr15096.html (FDIC); http://www.occ.treas.gov/news-issuances/news-releases/2015/nr-ia-2015-158.html (OCC) (each stating, "These proposed revisions would apply primarily to large, internationally active banking organizations and not to community banking organizations.").

Annex

Contact Information

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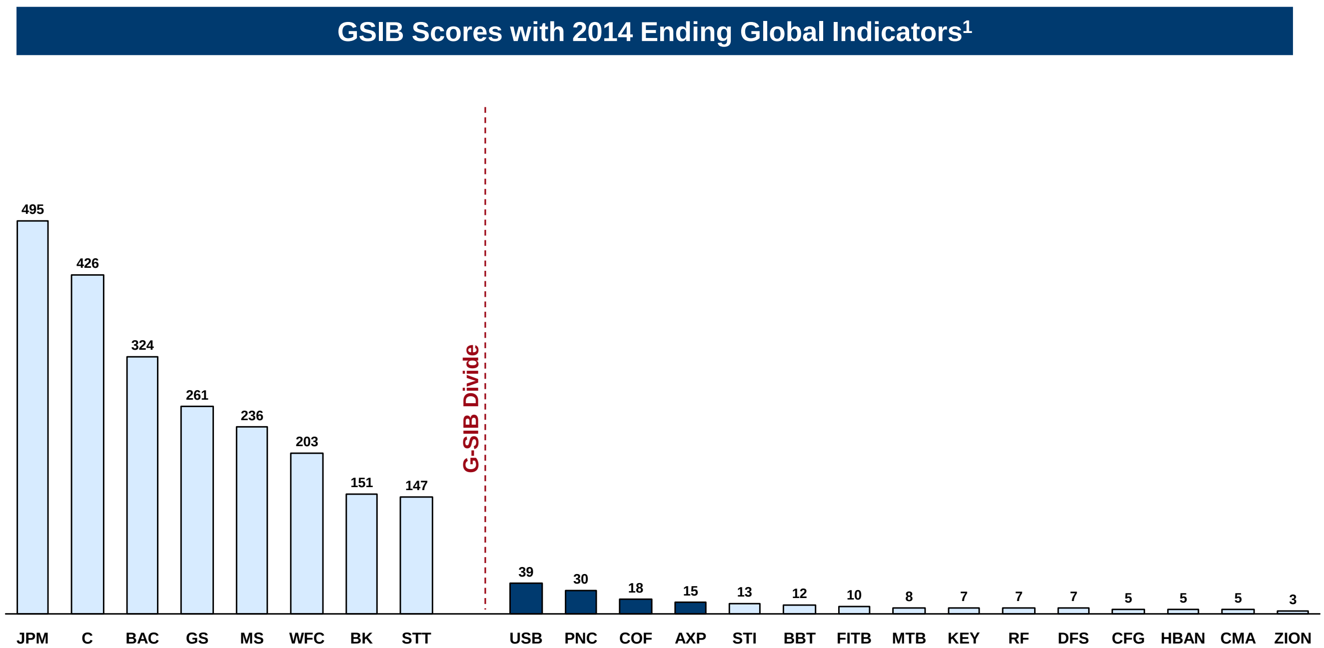
Appendix A

Comparison of Systemic Indicators for U.S. G-SIBs as compared to Regional and Traditional Banking Organizations

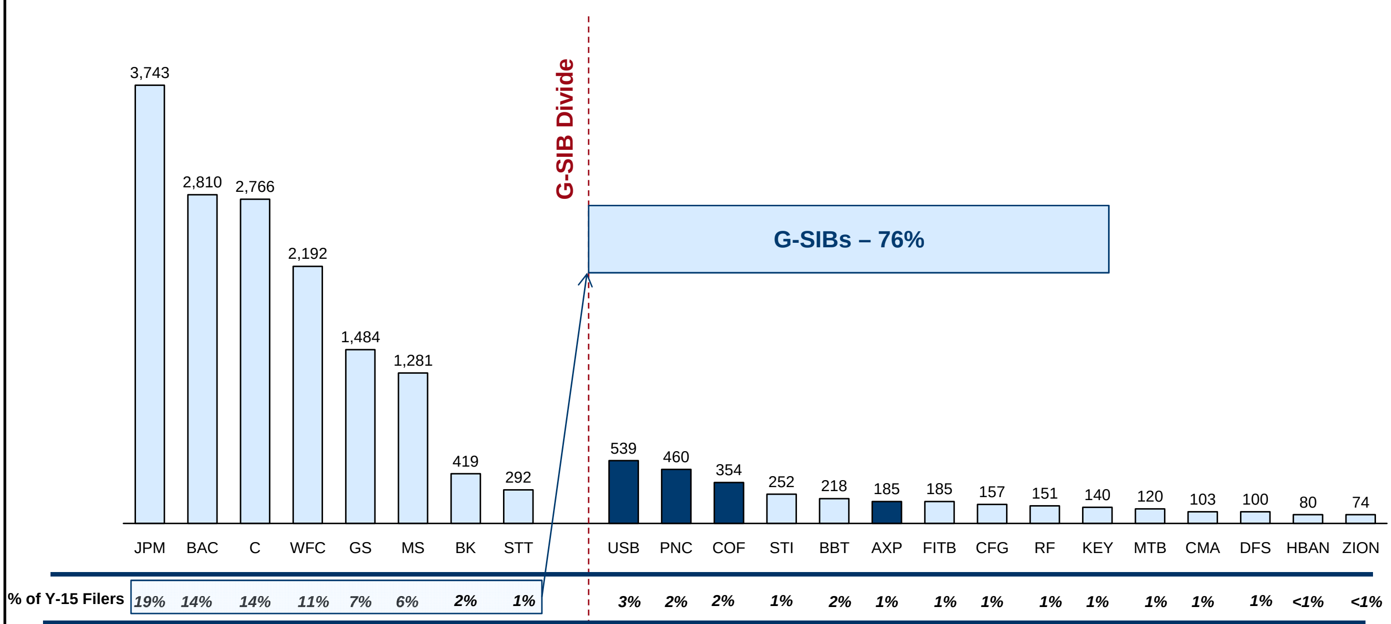
The systemic indicator scores show the vast gulf between U.S. G-SIBs and regional and traditional banking organizations



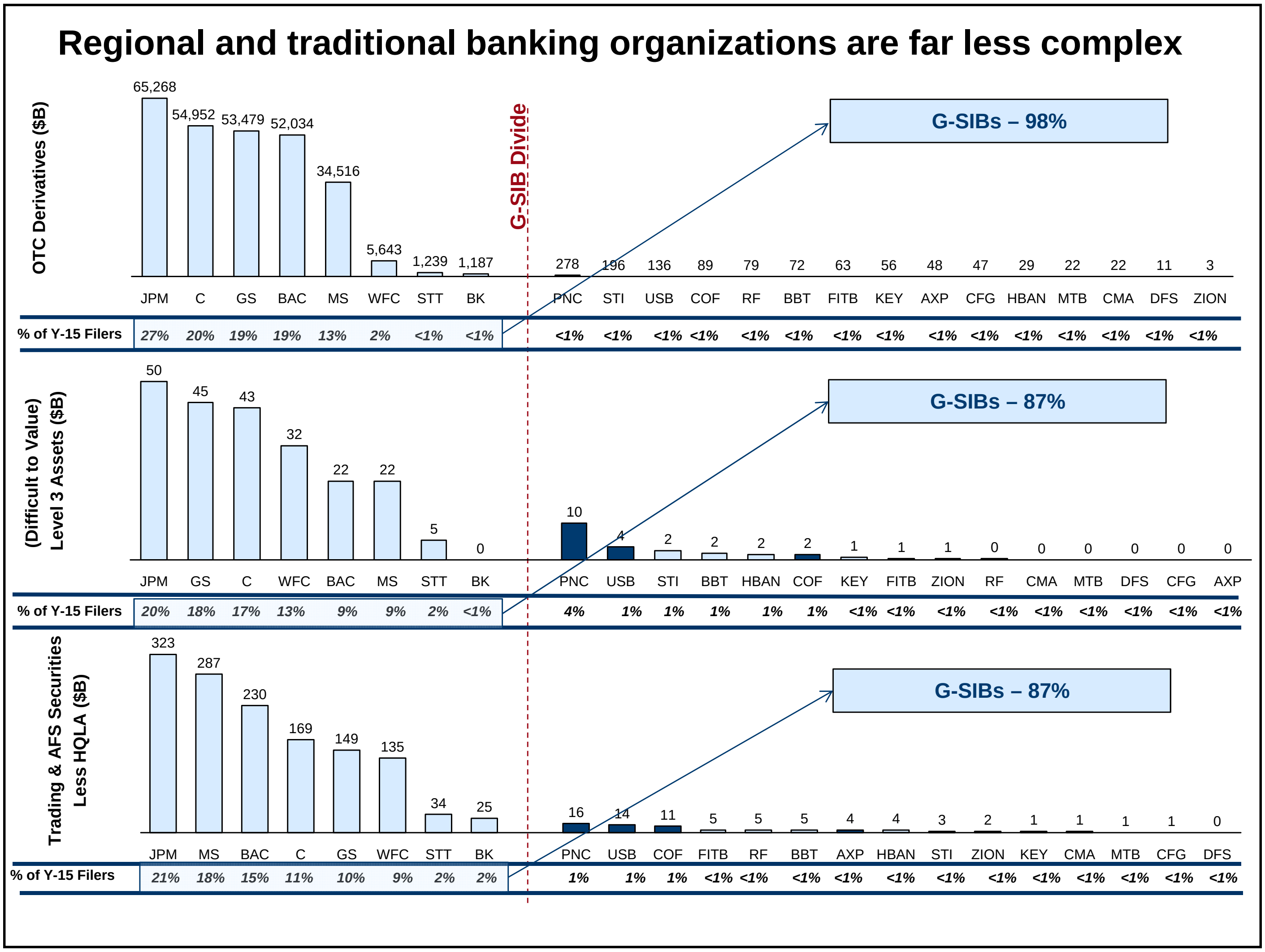
1) Based on FR Y-15 reports as of 12/31/2014; assumes spot USD/EUR exchange rate of 1.2141 as of 12/30/2014 (final trading day of 2014) and 2014 Basel denominators

U.S. G-SIBs are multiples larger in size than regional and traditional banking organizations

Total exposures as defined for use in Basel III Leverage ratio ($B)

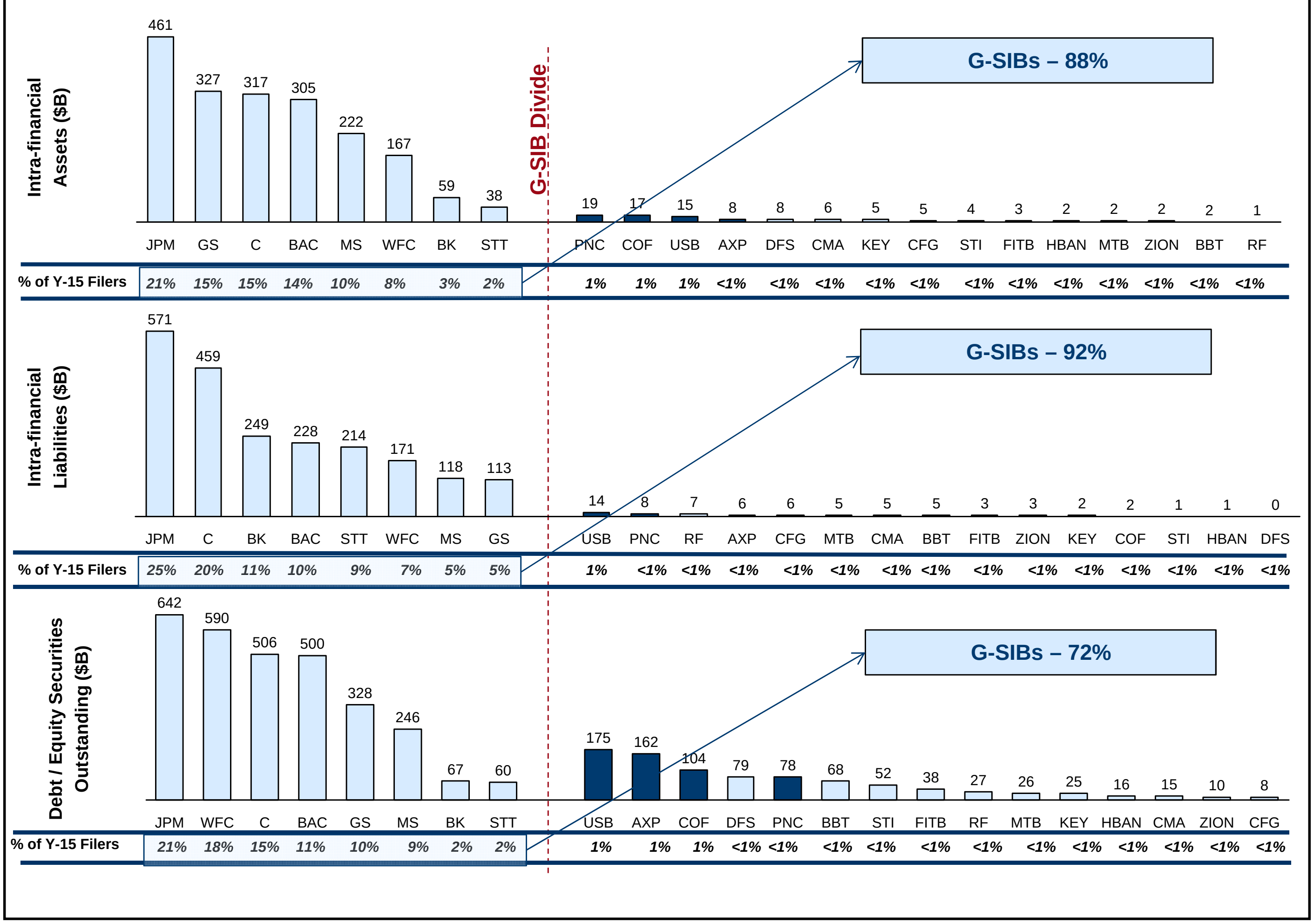


Source: Y15 Data; Data as of most recent regulatory filings (2014YE)

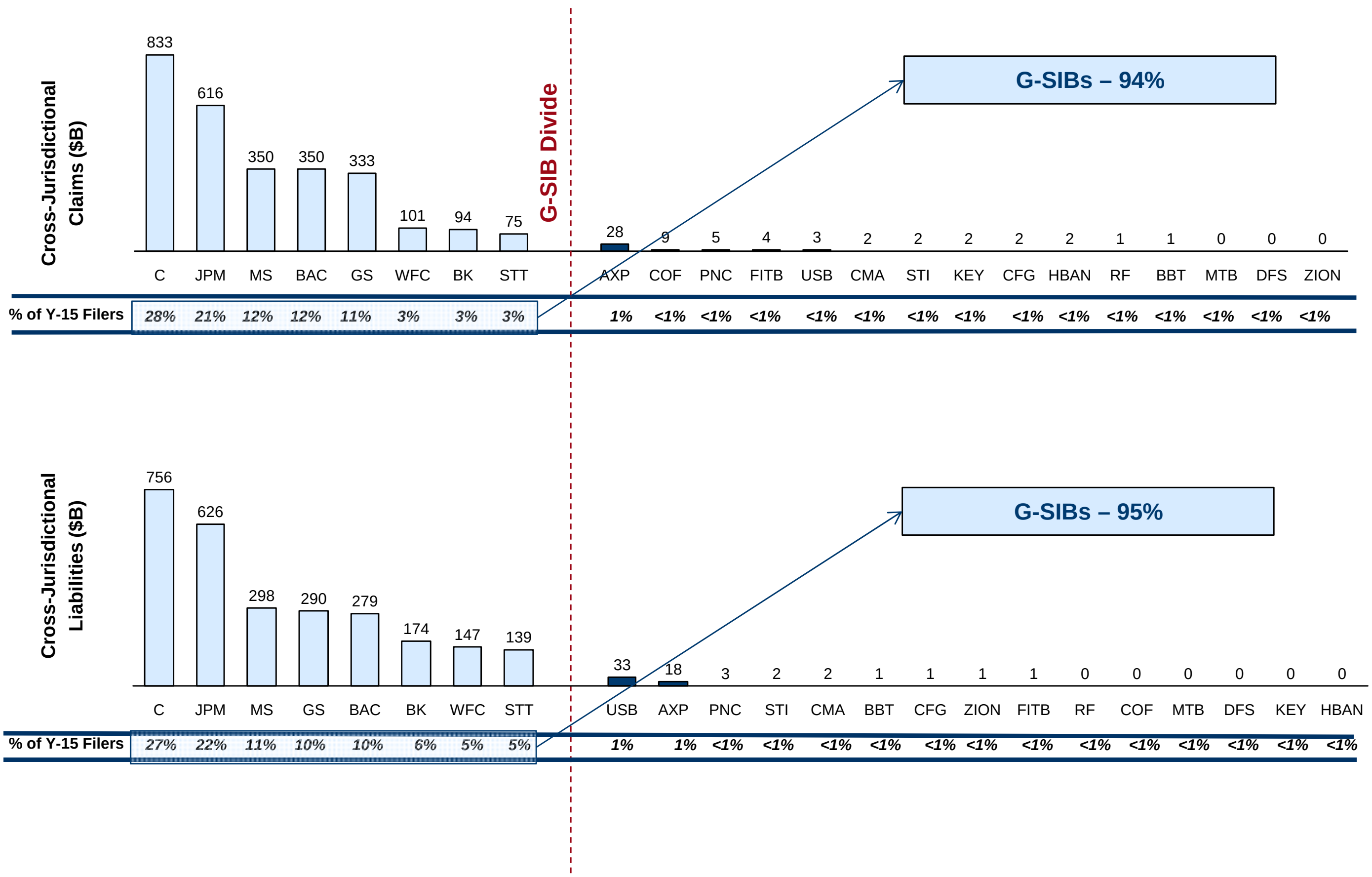


Regional and traditional banking organizations are far less complex
OTC Derivatives ($B)
65,268
54,952
53,479
52,034
34,516
5,643
1,239
1,187
JPM C GS BAC MS WFC STT BK
G-SIB Divide
278 196 136 89 79 72 63 56 48 47 29 22 22 11 3
PNC STI USB COF RF BBT FITB KEY AXP CFG HBAN MTB CMA DFS ZION
G-SIBs – 98%
% of Y-15 Filers
27% 20% 19% 19% 13% 2% <1% <1%
<1% <1% <1% <1% <1% <1% <1% <1% <1% <1% <1% <1% <1% <1% <1%
(Difficult to Value) Level 3 Assets ($B)
50 45 43 32 22 22 5 0
JPM GS C WFC BAC MS STT BK
10 4 2 2 2 2 1 1 1 0 0 0 0 0 0
PNC USB STI BBT HBAN COF KEY FITB ZION RF CMA MTB DFS CFG AXP
G-SIBs – 87%
% of Y-15 Filers
20% 18% 17% 13% 9% 9% 2% <1%
4% 1% 1% 1% 1% 1% <1% <1% <1% <1% <1% <1% <1% <1% <1%
Trading & AFS Securities Less HQLA ($B)
323 287 230 169 149 135 34 25
JPM MS BAC C GS WFC STT BK
16 14 11 5 5 5 4 4 3 2 1 1 1 1 0
PNC USB COF FITB RF BBT AXP HBAN STI ZION KEY CMA MTB CFG DFS
G-SIBs – 87%
% of Y-15 Filers
21% 18% 15% 11% 10% 9% 2% 2%
1% 1% 1% <1% <1% <1% <1% <1% <1% <1% <1% <1% <1% <1% <1%

Regional and traditional banking organizations are far less interconnected



Regional and traditional banking organizations' cross-jurisdictional activities are insignificant



The G-SIBs are much less substitutable