



By Electronic Mail

April 8, 2020

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

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

Re: Custody Bank Comments on Community Reinvestment Act Proposal (Docket ID OCC-2018-0008; RIN 1557-AE34; RIN 3064-AF22)

Dear Sirs and Madams:

The Bank of New York Mellon Corporation ("BNYM") and State Street Corporation ("State Street") write to offer our perspectives on the proposal by the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") to revise the agencies' Community Reinvestment Act ("CRA") regulations (the "Proposal"). Through our respective banking subsidiaries, BNYM and State Street are primarily engaged in custody banking, which involves the provision of financial services to institutional investor clients. As such, our banking subsidiaries subject to the CRA are designated as wholesale banks and subject to the Community Development Test under the current CRA regulations.¹

BNYM and State Street strongly support the CRA mandate and are committed to meeting the credit needs of our communities' low- and moderate-income ("LMI") neighborhoods and individuals. We are proud of the significant positive impacts our community reinvestment activities have made for decades pursuant to our wholesale bank designations and as evaluated under the Community Development Test. The Proposal, however, would disrupt these activities by fundamentally altering the CRA obligations of wholesale banks. Specifically, the Proposal would revoke all wholesale bank designations and subject custody banks, such as BNYM and State Street, to performance tests that are designed for retail-focused and full service banks.

¹ BNYM's banking subsidiaries subject to the CRA are Bank of New York Mellon, a New York-chartered state member bank, and BNY Mellon, N.A., a national bank. State Street's banking subsidiary subject to the CRA is State Street Bank and Trust Company, a Massachusetts-chartered state member bank.

The Proposal does not provide any reasons for this fundamental change, nor analysis of the disproportionate impact this change would have on wholesale banks or the communities they serve. The Proposal's lack of explanation makes it difficult to understand why the agencies have proposed to rescind the wholesale bank designation and Community Development Test for such banks. In fact, there are many reasons why the current CRA framework for custody banks has allowed these banks to serve their communities more meaningfully than would the Proposal's general evaluation framework. We therefore strongly urge that any final rule maintain wholesale bank designations and the Community Development Test for wholesale banks.

Part I of this letter describes the custody bank business model and ways in which it differs from the business models of retail-focused and full service banks. Part II describes the benefits to custody banks' communities of the wholesale bank designation and the Community Development Test. Part III explains why the Proposal's general evaluation framework would be incongruous with the custody bank business model. Finally, part IV urges the agencies to preserve the wholesale bank designation and Community Development Test.

I. Description of Custody Bank Business Model

Custody banks provide asset safekeeping, back-office, and other related operational services to large institutional investors, including pension funds, endowments, sovereign entities, and mutual funds, as well as private wealth clients. Custody services primarily involve the holding and servicing of assets on behalf of others. Custodians also offer various administrative services related to clients' assets, including the processing of income and interest payments, corporate action processing, proxy voting, client reporting, depository receipts services, transfer agency services, and fund administration and accounting services.

Custody banks are functionally very different than other banks subject to the CRA, including retail-focused and full service banks. Custody banks do not have a significant commercial, investment, or retail banking business. For example, custody banks generally do not provide credit cards, auto loans, or retail deposit accounts. Instead, custody bank revenues are primarily driven by fees collected for custody, asset management, and other services rather than by the use of custody banks' balance sheets to take principal risk.

A custody bank's assets, unlike those of a retail or full service bank, consist primarily of cash, cash equivalents, investment securities, and non-retail loans. At a custody bank, unlike a retail or full service bank, loans are generally less than one-third of total assets and lending is concentrated in financial institutions and commercial portfolios rather than loans for personal, family, or household use. Generally, custody banks have limited branch networks and do not rely on their branches to accept retail domestic deposits (that is, deposits from individuals for personal, family, or household use).

As discussed below, the wholesale bank designation and Community Development Test recognize this distinct business model. They allow custody banks to focus their CRA activities on community development lending, investment, and other services that are not related to home mortgage or consumer lending.

II. Benefits to Communities of the Wholesale Bank Designation and Community Development Test

The wholesale bank designation and Community Development Test to which wholesale banks are subject under the current CRA regulations have several important benefits for the local communities where custody banks operate.

First, the Community Development Test allows custody banks to focus on CRA activities with which they can uniquely make an impact based on their existing expertise and capabilities, such as innovative qualified investments, rather than retail loans that are more efficiently provided by other banks that are focused on such lending.

Currently, the Community Development activities of custody banks include investments in Low-Income Housing Tax Credits (“LIHTCs”) and Small Business Investment Companies (“SBICs”), loans and grants to qualifying community development organizations, and affordable housing loans as well as the purchase of qualifying mortgage-backed securities. These activities, especially LIHTCs and SBICs, require custody banks to have CRA programs staffed by employees with relevant specialized skills. The process of identifying and obtaining suitable community development financing opportunities that a bank can undertake safely and soundly requires an investment of time and resources. Such projects require working closely with local non-profits or government agencies to identify projects and put together the financing required to bring them to fruition. In addition, many affordable housing programs are tied to tax credits that are allocated every year by the Internal Revenue Service; the process is competitive and requires specialized knowledge of the local markets in order to successfully participate in such programs. LIHTCs are complex investments requiring considerable ongoing management attention and expertise due to the technical accounting requirements associated with administering them over time.

Second, the Community Development Test allows custody banks to serve broader statewide or regional areas with their qualifying CRA activities. This flexibility has allowed BNYM and State Street to serve – in addition to the cities in which their main offices and branches are located – other local geographies where their activities may have a greater impact. As such, the Community Development Test promotes reinvestment throughout a wider variety of communities than the current Large Bank Test or the Proposal’s general evaluation framework, reducing the problem of CRA “hotspots.”

Third, the Community Development Test addresses the fact that the custody bank business model generally does not include collecting deposits from retail customers. Because custody banks collect deposits primarily from corporate and institutional depositors, it makes sense for the CRA regulations not to compare the dollar value of custody banks’ CRA activities to that of retail-focused and full service banks that do collect significant deposits from retail customers.

III. Incongruity of the Proposal’s General Evaluation Framework with the Custody Bank Business Model

The Proposal’s general evaluation framework would be incongruous with the custody bank business model in several important ways. First, as noted, custody banks generally receive deposits from corporate and institutional clients. These deposits are incidental to the provision of custody, asset management, and other fee-based financial services. But the Proposal’s definition of “retail domestic deposits” would include these deposits, because the definition is

not actually limited to retail deposits.² For that reason, the large amount of corporate and institutional deposits that custody banks collect would distort their CRA obligations overall and in particular geographies. As such, under the Proposal:

- The denominator of custody banks' *bank-level* CRA Evaluation Measures and Community Development Minimums would be artificially large.
- The denominator of custody banks' *assessment area-level* CRA Evaluation Measures and Community Development Minimums would be inflated in those assessment areas where the custody bank's corporate and institutional customers' headquarters are located, which is where the Proposal would allocate such customers' deposits.
- Custody banks are more likely to be required to designate deposit-based assessment areas because they collect very large deposits from corporate or institutional customers on a nationwide basis, and those deposits are likely to arise from areas outside custody banks' relatively small facility-based assessment areas. Those deposit-based assessment areas would be likely to be located in populous urban centers with large numbers of asset management and investment management companies, which would lead to CRA "hotspots" in geographies that already may be well-served by banks.

Second, at the same time, custody banks' limited branch networks would make it particularly difficult for them to identify and capitalize on geography-specific CRA opportunities in areas that are not within a reasonable vicinity of their main office, including the Proposal's deposit-based assessment areas. In general, serving a community effectively requires a bank to have "boots on the ground" to meet with members of the community, develop an understanding of community needs, and plan and carry out responsive activities. This would particularly be true under the Proposal, which would limit the amount of credit awarded to community development investments relative to community development loans and other activities eligible for the Proposal's 2X multiplier.

Third, the Proposal's general evaluation framework favors retail-focused and full service business models compared to the custody bank business model. In particular, custody banks' limited lending infrastructure and ability to originate retail loans would make it more difficult for them to meet the same benchmark of the CRA Evaluation Measure as other banks, which can count qualifying retail loans toward the numerator and can more easily make loans eligible for the Proposal's 2X multiplier. In other words, under the Proposal's general evaluation framework, custody banks would start each evaluation period at a distinct disadvantage because they would have far fewer ways to reach the same 11 percent or 6 percent numerator to achieve an Outstanding or Satisfactory rating, respectively. Due to these disadvantages, custody banks would need to engage in much more community development activity than their retail-focused and full service bank peers to receive the same CRA ratings.

Fourth, custody banks that make retail loans to customers generally do so on an accommodation basis, and generally do not have the kind of large-scale retail lending operations

² Under the Proposal, "retail domestic deposits" would mean a "deposit" as defined in section 3(l) of the FDIA (12 U.S.C. 1813(l)) and as reported on Schedule RC-E, item 1, of the Call Report that is held in the United States and is provided by an individual, partnership, or corporation other than a deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the FDIA (12 U.S.C. 1831f(g)). Banks are required to report corporate and institutional deposits on Schedule RC-E, item 1, of the Call Report.

that would provide for meaningful statistical evaluation under the Proposal's Retail Lending Distribution Test. Despite their small amount of retail lending activity, these custody banks may become subject to the Retail Lending Distribution Test in certain assessment areas because the denominator of the "major retail lending product line" definition would only include retail loans, and custody banks are unlikely to offer many types of retail loans.

Finally, the strategic plan option is a poor fit for custody banks, and is not a substitute for the existing Community Development Test, for several reasons:

- Unlike the wholesale bank designation, there is no publicly available regulatory standard governing strategic plan approval. Instead, the strategic plan approval process subjects a bank to a regulatory review process that leaves its business model on unsure footing.
- Custody banks' specialized business model and relatively small retail footprints mean that members of the community may be less familiar with what custody banks do, which can make public engagement of the kind required for a strategic plan challenging.
- The uncertainties of the strategic plan approval process are compounded by the fact that strategic plans are time-limited, and thus may result in changes to a bank's CRA obligations over time. This lack of predictability would frustrate the medium- and long-term planning that is necessary for the types of community development activities in which custody banks engage. Further, it is not clear whether an approved strategic plan would have enough flexibility to adapt to changes to tax and fiscal policies occurring during the life of the plan that could dramatically alter the value of certain qualifying activities for which custody banks have particularly robust expertise, such as LIHTC investments.
- The costs and complexities involved in administering strategic plans, including to make significant upfront and ongoing investments in internal resources, conduct extensive public outreach, and develop alternative criteria for CRA evaluations, are unlikely to improve custody banks' ability to serve the needs of LMI communities compared to the Community Development Test.

For all of these reasons, the majority of banks eligible for wholesale or limited purpose designations, including custody banks, have opted not to adopt strategic plans despite the longstanding availability of that option.

IV. Maintenance of Wholesale Bank Status Would Preserve Custody Banks' Unique and Valuable Role in the CRA Ecosystem

The underlying goals of the Proposal include modernizing the CRA framework and encouraging banks to support a range of LMI communities and individuals through an array of CRA activities. Preserving the wholesale bank designation and existing Community Development Test in the final rule would strike that balance, because it would maintain the unique role that wholesale banks serve in the CRA ecosystem, as discussed in part II of this letter. As such, we strongly believe that the OCC and FDIC should preserve the wholesale bank designations and current Community Development Test, and also exclude wholesale banks from any new requirement to designate deposit-based assessment areas. We note that there is precedent for this approach in the Proposal, which would preserve the current performance standards for small banks by simply restating those standards in a separate subsection of the revised CRA regulations.

Preserving the wholesale bank designation and existing Community Development Test for wholesale banks is the most effective and straightforward way to allow custody banks to effectively serve their local communities, including broader regional areas, and to tailor the framework to custody banks' institutional client base.

If the final rule does not, however, maintain the wholesale bank designation and Community Development Test, the agencies should at least make changes to adapt the general evaluation framework to custody banks' business model, opportunities, and capabilities in a manner that is less punitive than proposed, including the changes listed below. We note, however, that the following changes would not serve as an appropriate substitute for preserving the wholesale bank designation and Community Development Test, as we urge the agencies to do.

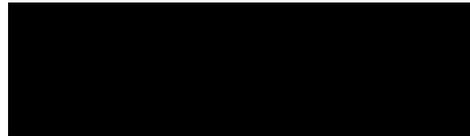
- Revise the definition of “retail domestic deposits” to exclude corporate and institutional deposits. This change would better tie a custody bank’s CRA obligations to its true retail customer base, and allow a custody bank to focus its CRA efforts in geographies it is capable of serving in a meaningful way.
- Provide benchmarks for the CRA Evaluation Measure that are more achievable for custody banks that have fewer types of qualifying activities to count toward the numerator (*i.e.*, that rely heavily on community development activities and not qualifying retail loans). This option could involve establishing alternative ratios for these banks using Tier 1 Capital or Total Assets as defined in their respective Call Reports – and calibrating the benchmarks under these alternative ratios to approximate the current amount of CRA activity required for a wholesale bank to receive a Satisfactory or Outstanding rating under the Community Development Test.
- Exempt custody banks from the Retail Lending Distribution Test, or at least limit the scope of application of that test by taking the following steps:
 - Including a minimum threshold for application of the Retail Lending Distribution Test that excludes a bank from that test if retail lending comprises less than 25 percent of any of the following measures: assets, revenues, or income.
 - Revising the “major retail lending product line” definition so that the denominator of the 15 percent test includes a bank’s total loan originations, not only its total retail loan originations. Otherwise, this definition could capture custody banks that make certain types of retail loans on an accommodation basis to select clients, but do not have enough diversity in their retail lending to avoid application of the 15 percent threshold to those types of retail loans.
- Exclude custody banks from the requirement to designate deposit-based assessment areas, which custody banks would have difficulties serving meaningfully. Failing to exclude custody banks from the requirement to designate deposit-based assessment areas would only exacerbate the issue of the CRA creating “hotspots” of concentrated reinvestment activities by a large number of banks in populous urban areas.
- Revise the Proposal’s 2X multiplier for certain community development activities to cover community development investments, including in mortgage-backed securities. For custody banks that have very low tolerances for credit risk and lack large-scale lending infrastructure, it may be more consistent with safety and soundness and

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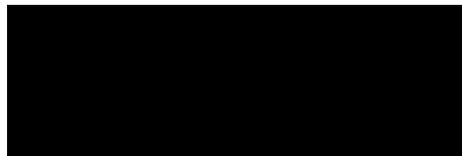
impactful for their communities to make community development investments rather than community development loans.

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We thank the agencies for their consideration of our comments. Should you have any questions, please do not hesitate to contact Joseph C. Ott, Vice President and CRA Officer of BNY Mellon, N.A., at (412) 236-5339 or joseph.ott@bnymellon.com or Joseph McGrail, Managing Director and President of the State Street Foundation, at (617) 664-3235 or jmcgrail@statestreet.com.



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